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No. 367

# In the Supreme Court of the United States

OCTOBER TERM, 1962

UNITED STATES OF AMERICA, APPELLANT

v.

BLISS & LAUGHLIN, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

## JURISDICTIONAL STATEMENT

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## JURISDICTIONAL STATEMENT

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### OPINION BELOW

The opinion of the district court (App. A, *infra*) is reported at 202 F. Supp. 334. The findings of fact and conclusions of law (App. B, *infra*), are unreported.

### JURISDICTION

The judgment of the district court was entered on March 27, 1962 (App. B, 56*b*, *infra*). The notice of appeal was filed by the United States on May 24, 1962 and time to docket the case in this Court was extended to August 22, 1962, by order of the court below dated July 9, 1962. The jurisdiction of the Court is conferred by Section 2 of the Expediting

Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *United States* v. *duPont & Co.*, 353 U.S. 586; *United States* v. *Columbia Steel Co.*, 334 U.S. 495.

## QUESTIONS PRESENTED

This case involves the validity, under Section 7 of the Clayton Act, of the acquisition by Bliss & Laughlin, Inc. ("Bliss") of all the assets of Sierra Drawn Steel Corp. ("Sierra"). The questions presented by this appeal are as follows:

1. Whether the production and sale of cold finished steel bars, the exclusive business of Sierra and Bliss, constitute an appropriate "line of commerce" for purposes of Section 7 of the Clayton Act.

2. Whether the four states of California, Washington, Oregon, and Arizona, in which Sierra sold nearly all its products, constitute an appropriate "section of the country" for purposes of Section 7 of the Clayton Act.

3. Whether the acquisition by Bliss of Sierra may substantially lessen competition or tend to create a monopoly in the production and sale of cold finished steel bars in the above four-state area, in violation of Section 7 of the Clayton Act.

In our view the court below was clearly in error in its disposition of each of these issues. However, since the decision of the district court was rendered prior to and without the benefit of this Court's recent decision in *Brown Shoe Co. v. United States*, 370 U.S. 294, which dealt at length with each of these issues, we suggest that it would be appropriate to remand the case to

the district court for further consideration in light of *Brown Shoe* rather than to undertake review of the sizable record in the Supreme Court.

## STATUTES INVOLVED

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. 18, provides in pertinent part:

> No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

## STATEMENT

### 1. THE MERGING COMPANIES

Sierra Drawn Steel Corp., the acquired company, and Bliss & Laughlin, Inc., the acquiring company, are both engaged exclusively in the production and sale of cold finished steel bars (Fdgs. 3, 4, App. B). These are specialty steel products made either by drawing hot rolled bars[1] through a die (cold drawn bars), or by rotating the hot rolled bars around cutting heads that remove and polish their surface (turned and

[1] Hot rolled bars are produced from steel ingots in hot rolling mills which roll the ingots into bars at extremely high temperatures (Tr. 50).

polished bars) or by grinding a cold drawn or turned bar to produce a better finish (ground and polished bars) (GX 2, p. 9; Tr. 41, 43–44). The various processes remove the rough scale and imperfections found in hot rolled bars (Tr. 47) and impart the four characteristics which distinguish cold finished steel bars—smooth finish, uniformity of size and concentricity, high tensile and yield strength, and machinability (GX 2, pp. 7–8; Tr. 46–47). Cold finished steel bars are used for tens of thousands of industrial purposes where all or some of the above characteristics are required (Tr. 61, 63, 65–66, 1097).

Sierra was incorporated in California in 1946, and opened a plant in Los Angeles for the production and sale of cold finished steel bars (Ans. par. 9). As its business expanded, Sierra opened another plant in Seattle, Washington (GX 7; Tr. 104–105), which enabled it to produce a wide range of sizes and shapes (Tr. 99). By 1959 Sierra had grown to become the second largest seller of cold finished steel bars in the four-state area of California, Washington, Oregon and Arizona with annual sales of over $2,900,000, about 20.3% of the four-state market (GX 17, 25; Tr. 103–104).[2] Virtually all (99.7%) of its production that year was sold in this four-state area (GX 32a).

[2] The following are the 16 mill suppliers listed on GX 1, which sold an aggregate of 67,306 tons of cold finished steel

Bliss is a Delaware corporation with home offices in Harvey, Illinois (Fdg. 1, App. B). Throughout its seventy-year history, Bliss has operated as an independent

bars in the four-state area in 1959 and corresponding percentages:

| | Tons | Percent (approximate) |
|---|---|---|
| Republic Steel Corp. | 16,806 | 25.0 |
| Sierra Drawn Steel Corp. | 13,638 | 20.3 |
| Pacific Tube Company | 8,325 | 12.4 |
| La Salle Steel Company | 8,310 | 12.3 |
| M & A Steel Sales & Services Co. | 5,313 | 7.9 |
| Bliss & Laughlin, Incorporated | 3,612 | 5.4 |
| Jones & Laughlin Steel Corp. | 3,167 | 4.8 |
| Bethlehem Steel Co. | 2,169 | 3.2 |
| Crucible Steel Company | 1,512 | 2.2 |
| Wyckoff Steel Company | 1,500 | 2.2 |
| Copperweld Steel Co. | 1,371 | 2.0 |
| Timken Roller Bearing Co. | 480 | |
| Rods Inc. | 451 | |
| United States Steel Corporation | 449 | |
| Moltrup Steel Products Company | 143 | |
| Cumberland Steel Company | 60 | |

The government economist who compiled these statistics testified that they resulted from investigation of, and inquiry to, all companies which might possibly sell in the four-state area (Tr. 447–48, 451).

The tonnage figures were stipulated as correct by the defendant (GX 1) and so found by the court (Fdg. 259, App. B). Defendant challenged the percentage figures, however, on the ground that other firms outside the four states might have sold within them and its doubts were incorporated in proposed findings, accepted by the court. In our view, the evidence of other sales is largely speculative, and in any event does not detract from "the accuracy of the broad picture presented" (*Brown Shoe Co.* v. *United States*, 370 U.S. 294, 341, fn. 69) as to the shares of the western market.

Thus, Fdg. 243 adverts to four companies not listed on GX 1 which sell "an undetermined quantity" of cold finished steel bars in the four-state area. But on direct examination by the government, neither the president of Bliss nor its sales representative on the West Coast could name any companies selling

or "non-integrated" steel company, purchasing hot rolled bars from "integrated" steel companies such as United States Steel, Bethlehem or Republic and converting them into cold finished steel bars (GX 7). In 1959, prior to its acquisition of Sierra, Bliss had total annual sales of over $52,700,000 (GX 1, p. 13; Tr. 234). Of this over $843,000 were in the four western states of California, Washington, Oregon and Arizona (Fdg. 164, App. B), where Bliss ranked sixth in sales with about 5.4% of that market (GX 1, *supra*,

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in the four-state area besides those listed in GX 1 (Tr. 121, 311–12). On cross-examination by defendant, Bliss' president made reference to the possibility that Kaiser might be a supplier not listed on GX 1 (Tr. 229–230) and, when recalled to the stand more than five weeks later, he referred to International Harvester as another possible shipper into the four-state area (Tr. 1009). On further examination by the government he stated that the latter company had shipped only 80 to 100 tons into the four-state area, which was less than ¼ of one percent of the total sold in that area (Tr. 1026). There was no evidence in the record of sales in the four-state area by the other two companies mentioned in Fdg. 243—H. K. Porter and Fitzsimmons Steel—other than a passing reference to them by a Bliss vice-president in enumerating competitors on the West Coast which sold nationally (Tr. 656–57). Fdg. 243 lists five more companies which "may sell in this area", but there is no evidence showing any sales or shipments by these firms in the four-state area.

Fdgs. 245–248 cite two leading steel service centers which shipped 1030 and 960 tons to their west coast warehouses in 1959 (Tr. 1144, 1155, 1157). These shipments were "either odd sizes or slow moving sizes" (Tr. 372) and the amounts involved were too small to affect substantially the market positions of the merging companies. In any event, the evidence showed that these service centers were customers of Bliss, Sierra and other mill suppliers, sold in smaller quantities and at higher prices than mill suppliers and were not significantly competitive (Tr. 81–82, 118–19, 278–80, 317).

n. 2). At that time, Bliss had no production facilities in the four-state area, and all its sales there had to be filled by shipments from its plants in Illinois, New York, Michigan or Massachusetts (GX 7; Tr. 308). After the merger, Bliss' reported capacity for the production of cold finished steel bars was larger than any other company in the United States or Canada (GX 18, Tr. 159–60) and it is the largest firm exclusively engaged in the production and sale of cold finished steel bars (GX 34; Tr. 621).

### 2. THE ACQUISITION

Over a period of eight years, Bliss had a number of discussions with Sierra about the possibility of merger (Tr. 131). In September, 1959, Bliss completed negotiations for the purchase of realty near Los Angeles and announced its plans to construct a plant[*] (GX 37, 38, 39; Tr. 714–15, 718, 719–21). These plans were prompted by the difficulties Bliss encountered in expanding its west coast operations from midwestern and eastern plants (GX 38, 45; Tr. 719, 755, 757–58). If Sierra had not been acquired,

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[*] In the 1960 Directory of Iron and Steel Works of the United States (GX 18), of 4,175,000 tons capacity reported by 40 firms, Bliss accounted for 347,000 (52,000 of which were attributable to Sierra's facilities). The next ten were Republic Steel Corp.—510,000 tons; Jones & Laughlin—500,000 tons; Wyckoff Steel Corp.—483,709; LaSalle Steel Co.—310,000 tons; Crucible Steel Co.—169,400 tons; Nelsen Steel & Wire Co.—150,000; Automobotive Materials Corp.—150,000 tons; Columbia Steel & Shafting Co.—135,000 tons; Timken Roller Bearing Co.—125,000 tons; United States Steel—95,410 tons (Fdg. 162, App. B, *infra*).

Bliss would have carried out the plans to build its own plant (GX 39; Tr. 732–733, 735, 785).

On January 12, 1960 Bliss entered into an "Agreement and Plan of Reorganization" with Sierra whereby Bliss agreed to give 36,157 shares of its common stock for the business and assets of Sierra (GX 14). Despite a warning from the Department of Justice on January 27, 1960 that the acquisition "raises a sufficient question of the possibility of a violation of Section 7 of the Clayton Act * * * to require an inquiry by the Department," the agreement was executed on February 15, 1960, and the business and assets of Sierra were transferred to Bliss (Fdg. 1, App. B). Sierra was then dissolved in accordance with California law.

### 3. THE DECISION BELOW

A complaint was filed against Bliss on June 28, 1960 charging that the effect of the acquisition of Sierra by Bliss "may be to substantially lessen competition or tend to create a monopoly in the production and sale of cold finished steel bars in the Four State Area consisting of the States of California, Oregon, Washington and Arizona." (Complaint, p. 6). A motion for preliminary injunction, to require Bliss to continue operating the Sierra plant and to prevent removal of assets from Sierra's premises, was deferred until the trial in December 1961. At the conclusion of the trial, the district court entered a two-page memorandum opinion on January 29, 1962, denying the preliminary injunction and ruling on the merits that

the government "has failed to prove that the challenged acquisition has the reasonable probability of substantially lessening competition in the production or sale of cold finished steel bars" in the four-state area (App. A). The court stated that *Crown Zellerbach Corp. v. Federal Trade Commission*, 296 F. 2d 800 (C.A. 9), certiorari denied, 370 U.S. 937, was distinguishable because a "substantial tonnage" of cold finished bars were shipped into the four-state area from the midwest and east by Bliss and others, and up to 1960, the "overwhelming preponderance" of Bliss' sales were made outside the area (App. A). It held that vigorous competition was assured by "an abundance of capacity and of competing sellers, a wide choice of suppliers among which the purchasers may choose, a lack of obstacles restraining new entrants into the business, and a lack of power in the defendant to control prices, supply or entry" (App. A).

Thereafter, on March 27, 1962, the court dismissed the government's complaint. No further opinion was filed. The court signed the defendants' proposed findings of fact and conclusions of law, which rejected the government's contentions on all points and found that cold finished steel bars was not an appropriate line of commerce, that the four-state area was not an appropriate section of the country and that, even if the government's contentions on these points were correct, the merger's effect upon competition would not violate Section 7 of the Clayton Act.

## THE QUESTIONS ARE SUBSTANTIAL

In the present case, the government challenged the acquisition of a regional company engaged in the production and sale of cold finished steel bars in four Western states, and ranking second in that market, by a national company, ranking sixth in the market. The court below, prior to this Court's decision in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, rejected both the geographic and product markets proposed by the government for testing the effect of the acquisition upon competition, and held that the acquisition did not violate Section 7 of the Clayton Act. We submit that the district court applied improper standards in determining "line of commerce", "section of the country" and "substantial lessening of competition." These factors are involved in every inquiry under Section 7 of the Clayton Act, and the decision below raises particular uncertainties about the effectiveness of the Act as applied to mergers in the steel industry. This case, therefore, presents questions of substantial importance in the enforcement of Section 7.

The decision below consists of the court's brief memorandum opinion and voluminous findings of fact and conclusions of law which were proposed by defendant and accepted by the court without change. While denominated "findings of fact", the great majority of the district court's findings were upon mixed questions of law and fact involving the application of the standards for determining the legality of a merger under Section 7. We therefore believe that these conclusions must be reassessed in light of the

elaboration of the applicable standards set forth in *Brown Shoe Co. v. United States*, 370 U.S. 294. Since the district court did not have the benefit of this Court's *Brown Shoe* decision in considering the present case, the most appropriate disposition of this appeal would be to vacate the judgment below and remand for further consideration by the district judge in light of *Brown Shoe*. Reconsideration at this time by the district court may obviate the necessity for Supreme Court review of a lengthy record. It will, at the very least, present for review a decision focused on the standards elaborated in *Brown Shoe*.

1. LINE OF COMMERCE

In setting out the guidelines for the appropriate "line of commerce" in a Section 7 case, this Court pointed out in *Brown Shoe Co. v. United States*, 370 U.S. 294, 325, that "reasonable interchangeability of use" determines only "the outer boundaries of a product market" and that "within this broad market, well-defined submarkets may exist which, in themselves, constitute product markets for antitrust purposes". The Court continued (p. 325):

> The boundaries of such a submarket may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.

Applying these standards, the Court affirmed the district court's findings that men's, women's and chil-

dren's shoes were appropriate lines of commerce (370 U.S. at 326). Similarly, in *United States* v. *duPont & Co.*, 353 U.S. 586, 593, applying a test of "sufficient[ly] peculiar characteristics and uses", the Court held that automobile finishes and fabrics constituted a line of commerce for Section 7 purposes.

We submit that, under these standards, cold finished steel bars clearly form an appropriate product submarket for purposes of Section 7. The uncontradicted evidence at trial showed that cold finished steel bars are recognized by the steel industry as a distinct product line (GX 2, pp. 4, 5; Tr. 74, 76, 80, 612, 681–82); that cold finished steel bars have peculiar characteristics—smooth and shiny finish, uniformity of size and concentricity, high tensile and yield strength, and machinability (GX 2, p. 7–8; Tr. 46–47), and many peculiar uses (GX 2, pp. 7–8, GX 33; Tr. 612, 618, 620), including some for which no economically feasible substitutes are available (e.g., pump shafting (Tr. 400–2), drill bushings (Tr. 412–13), various types of rounds (GX 3, Tr. 83–86) and parts for power lawnmowers and edgers (Tr. 379–81, 386)). Furthermore, cold finished steel bars are made by specialized producers—a fact illustrated by the two merging companies here, both of which were exclusively engaged in the production and sale of such bars (GX 1, pp. 13, 14). In *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576, 594 (S.D. N.Y.), the court ruled that "[t]he products of the iron and steel industry are generally distinct one from the other and as a group distinct from the products of other industries". Judge Weinfeld found that "cold

rolled sheets", "hot-rolled sheets" and "hot-rolled bars" constituted separate lines of commerce under Section 7 (168 F. Supp. at 595). The same reasoning applies to cold finished steel bars.

In this case, the district court's memorandum opinion (App. A), which discussed the effect of the merger on "the production or sale of cold finished steel bars", seemed to assume that this business was a line of commerce. The subsequent findings and conclusions stated, however, that no appropriate line had been shown (Concl. 2, App. B), on the ground that other materials can be—and had been in a number of specified cases—substituted for some of the thousands of uses of cold finished steel bars (e.g., Fdgs. 23, 24, 26, 46; App. B).[1]

[1] The court found that hot rolled bars have been substituted in the manufacture of certain automobile parts, cement-finishing equipment, plugs and pipeline fittings, and in automatic screw machine shops (Fdgs. 45–71). Bars made by the heading process are used to make hose ends, tube, grip and hexagon nuts, and spark plug shells (Fdgs. 72–80). Cold drawn wire is used in the manufacture of pistons, speedometer shafts, studs, fasteners, spark plug shells, tube and hexagon nuts (Fdgs. 86–94). On the other hand, the record contains evidence that customers of screw machine shops preferred products made from cold finished bars over hot rolled bars (Tr. 388–91); and products for which cold headed bars or wire can be used constituted no more than 25% of cold finished bar sales (Tr. 684; see Tr. 79–80, 629, 683–687, 695–697).

The court further made findings concerning interchangeability of cold finished steel bars, in limited instances, with brass (Fdg. 97), nylon (Fdg. 103–04), cold drawn tubing (Fdgs. 105, 118–20), aluminum (Fdgs. 112, 117), zinc die castings (Fdg. 123), powdered metal (Fdg. 129), stainless steel (Fdg. 130), leaded steel (Fdg. 133), cold rolled stripped steel (Fdg. 134), sintered iron (Fdg. 135), stampings (Fdg. 136) and lead (Fdg. 138).

In light of this Court's *Brown Shoe* decision it is plain that the district court applied the wrong standards, and reached the wrong result. Interchangeability with other products in some instances defines only "the outer boundaries of a product market" and does not refute the existence of a product submarket.[5] The production and sale of cold finished steel bars is a recognized business and, as shown above, satisfies all the indicia set out by this Court in *duPont* and *Brown Shoe, supra,* for constituting a line of commerce for purposes of Section 7.

2. SECTION OF THE COUNTRY

As in the product market, a geographic submarket of the United States can constitute an appropriate "section of the country" for Section 7 purposes. This is clear from the plain language of the statute, its leg-

[5] Thus, the alleged instances of substitution of cold drawn wire (Fdgs. 25, 87, 94), are shown to be irrelevant by the testimony of Bliss' president that the iron and steel industry recognized wire as a separate and distinct product (Tr. 79, 80, 285); that Iron Age Magazine reported wire prices separately from bar prices (Tr. 79); and that the principal uses of wire and cold finished steel bars were not the same (Tr. 79, 285–86). Moreover, in finding some "interchangeability" with other materials such as brass, aluminum, plastics, nylon or exotic metals (see e.g., Fdgs. 23, 34, 36, 37, 42, 132), the court below looked only to the outer limits of the product market, *Brown Shoe Co. v. United States*, 370 U.S. at 325, and improperly ignored the existence of submarkets which constitute appropriate lines.

islative history,[6] and numerous prior cases,[7] and was reaffirmed in *Brown Shoe Co. v. United States*, 370 U.S. 294, 336. As the Court stated, the area chosen must "'correspond to the commercial realities' of the industry" and be "economically significant" (pp. 336–337). If the area of competition between the merging firms is significant, however, it does not matter that it is only "a fraction of the geographic markets in which either has operated" (p. 337). Referring to a hypothetical merger between an eastern company and a western company competing in but two midwestern cities, the Court stated (p. 337, fn. 65) "the fact that the latter outlets represented but a small share of each company's business would not immunize the merger in those markets in which competition might be adversely affected".

Under this test, the four states of California, Washington, Oregon and Arizona constituted an appropriate "section of the country". Sierra sold virtually all its product in those four states. It was,

[6] S. Rep. 1775, 81st Cong., 2d sess., p. 6, quoting *Standard Oil Co. v. United States*, 337 U.S. 293.

[7] *United States v. Bethlehem Steel Corp.*, 168 F. Supp. 576 (S.D.N.Y.); *American Crystal Sugar Co. v. Cuban-American Sugar Co.*, 152 F. Supp. 387 (S.D.N.Y.), affirmed, 259 F. 2d 524 (C.A. 2); *Erie Sand & Gravel Co. v. Federal Trade Commission*, 291 F. 2d 279 (C.A. 3); *Crown Zellerbach Corp. v. Federal Trade Commission*, 296 F. 2d 800 (C.A. 9), certiorari denied, 370 U.S. 937.

therefore, the "area of effective competition" (S. Rep. 1775, n. 6, *supra*) between Sierra and Bliss, within which the effect of this merger has to be appraised. Moreover, the four-state area was clearly an "economically significant" section of the country. Sales of cold finished steel bars in the area amounted to more than 67,306 tons in the year before the merger (Fdg. 259, App B).

The relative independence of this area is shown by the rapid growth of Sierra and other western producers, and the large share of the sales in the four states made from western mills.[8] It is further substantiated by evidence that western producers of cold finished bars have significant advantages in serving this four-state market both in the margin provided by freight costs and in their ability to provide desired services to western consumers (Tr. 83, 323, 324, 757).[9] In fact, after its purchase of Sierra, Bliss

[8] Of the sales set out in GX 1, plants located in the four-state area accounted for 39,852 tons, or almost 60 percent in 1959. The district court, however, found that local producers sold somewhat less than 50 percent of the bars produced in the area in 1959 (Fdg. 148, App. B). While we regard this finding as a clearly erroneous conclusion resulting from an improper combination of two different compilations of statistics (the government's data in GX 1 and Census Bureau data, see Def. Ex. A45, A60, A61, Tr. 1243–1244), even the court's finding indicates the importance of western production to the sales made in the area.

[9] The evidence indicated that western producers could sell and ship in less than carload lots (Tr. 309, 318), which was not feasible for the Eastern producers; that their most important competitors were companies with plants in the same area (Tr. 119–120, 320, 323), and that shipments from the East were concentrated in types of bars which were not produced in the West (Tr. 787–788). Conversely, a western pro-

reported to its stockholders that the acquisition was "an important step in the Company's effort to expand its national market coverage and to strengthen its competitive position in the rapidly expanding Pacific Coast area" (GX 45; Tr. 754).

Nevertheless, the district court rejected the four-state area as an appropriate "section" in which to measure the effect of the Bliss-Sierra merger because of the amount of competition within the area from producers outside the area (Fdgs. 143–144, 147–148, App. B); because area prices are based upon national prices set by integrated steel companies (Fdgs. 149, 154, 166–167, App. B); and because of the relative insignificance of the four-state area in terms of national production and sales and in terms of the production and sales of the large national firms (Fdgs. 155–165). The last of these three reasons for rejecting the four-state market was, as we have pointed out, *supra*, p. 15, expressly repudiated by this Court's *Brown Shoe* decision. Nor does it seem that the second reason can be properly accorded any weight in a Section 7 case. The existence of such anticompetitive characteristics as a high degree of industry concentration and price leadership through a basing-point system cannot serve to immunize a market from attack on further attempts to concentrate ownership in fewer and fewer hands, for these attempts may tend both to eliminate the nonprice competition still present in the market (see

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ducer testified that he could not economically sell outside the four-state area (Tr. 1132–1133). Sierra's operations outside the area were negligible for that reason.

Fdgs. 171, 177, 194, App. B) and to prevent the possibility of resurgent price competition when economic conditions favor it.

Finally, the district court was plainly wrong in holding that the four-state area could not be a "section of the country" for purposes of Section 7 so long as a substantial portion of the sellers in the area manufactured their product elsewhere. For purposes of defining a geographic market and thereby arriving at an estimate of the effects of a merger on competition, it is proper to look at the actual competition in any economically significant area of the country. The sales statistics show that, to a significant number of customers in a significant area of the country, the choice between the goods of Sierra and Bliss represented a highly material factor in their purchasing decisions. And this choice was eliminated by the merger. See *Crown Zellerbach Corp.* v. *Federal Trade Commission*, 296 F. 2d 800, 817 (C.A. 9), certiorari denied, 370 U.S. 937.

### 3. SUBSTANTIAL LESSENING OF COMPETITION

In its opinion, the district court held that the acquisition of Sierra by Bliss would not substantially lessen competition since vigorous competition was assured by "an abundance of capacity and of competing sellers, a wide choice of suppliers among which the purchasers may choose, a lack of obstacles restraining new entrants into the business, and a lack of power in the defendant to control prices, supply

or entry" (App. A). The findings and conclusions developed these points in greater detail.[10].

The court below plainly placed undue reliance upon a Sherman Act test—whether Bliss had achieved monopoly power over the market. There is no doubt, however, that Congress passed amended Section 7 to reach incipient restraints and monopolies, not covered by the Sherman Act. S. Rep. 1775, *supra*, pp. 4–5; H. Rep. 1191, 81st Cong., 1st Sess., p. 5. As the Court held in *Brown Shoe Co.* v. *United States*, the tests under Section 7 are "less stringent than those used in applying the Sherman Act." (370 U.S. at 329; see also *id.* at 318, 328, 333–334). To be sure, the present context of competition in the industry, adverted to by the court below, is an important factor to consider under Section 7. But "remaining vigor [of competition] cannot immunize a merger if the trend in that industry is toward oligopoly" (*Brown Shoe Co., supra*, 370 U.S. at 333). The validity of the merger depends upon the substantiality of the merging companies as viewed against the industry context, and in the light of the Congressional policies enacted in Section 7.

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[10] The court found vigorous competition in the production and sale of cold finished steel bars in the four-state area (Fdgs. 171, 177, 194, App. B) and the national market (Fdgs. 197, App. B). It found that Bliss lacked power to control price of supply, or to foreclose entry (Fdgs. 179, 181, 182, 200–202, App. B), setting out prior entrants into the field (Fdgs. 200, 203–208, 209, App. B), and the possibility of further entry (Fdgs. 192, 193, 202, App. B). It found that Bliss was small compared to the large integrated companies (Fdgs. 211–227, App. B).

That the district court did not apply a test appropriate to Section 7 is made apparent by comparing this case to *Brown Shoe* in terms of those factors which the Court found dispositive in its analysis of the horizontal aspects of the Brown-Kinney merger (370 U.S. at 343–346). These were: (a) the market shares of the merging firms; (b) the impact of an acquisition by a leading national firm; (c) the tendency towards concentration in the industry and (d) the absence of mitigating factors.

(a) *Market Shares.*—This Court ruled in *Brown Shoe* that "[t]he market share which companies may control by merging is one of the most important factors to be considered when determining the probable effects of the combination on effective competition in the relevant market" (370 U.S. at 343). In that case, it invalidated a merger of two companies which brought together 5% of the "fragmented" shoe retailing market. In this case, the merger combined the second and sixth firms with over 20% and 5% of sales in the relevant market (GX 1, 25). In 1960, the Bliss-Sierra combination was first in sales in the four-state area with 24.91 percent of the relevant market (GX 28).

(b) *National Firms in Local Competition.*—The Court in *Brown Shoe* gave effect to the Congressional policy "to promote competition through the protection of viable, small, locally owned businesses", and noted, as a significant aspect of that merger, that the acquisition was by a large integrated national chain (370 U.S. at 344). In this case, Sierra was

a vigorous regional company which had made rapid strides in the expanding western market, sustained by the advantages of its location in that market. (GX 7, pp. 2–3, Tr. 106, 309, 323, 757).[41] If the Clayton Act does not restrain the acquisition of such companies by national firms, the stimulus of regional competition in established industries like steel will be only transitory.

(c) *Tendency Toward Concentration.*—The Court in *Brown Shoe* relied upon the tendency toward concentration as supporting the proscription of a merger, since Section 7 was intended to halt such tendencies "in their incipiency." (370 U.S. at 346). In the present case, there was more than a trend toward oligopoly; there was an oligopolistic market already in existence and becoming more restricted through increasing concentration. Thus, in 1959, the four leading companies had 69.96% of the sales in the four-state area (GX 25), and in 1960 the four leading companies had 73.25% of sales in the area (GX 28). On a national scale as well, a recent study showed that the production and sale of cold finished steel bars is heavily concentrated, although among different companies.[42] This situation underlines the importance of regional competitors.

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[41] In *United States* v. *Colymbia Steel Co.*, 334 U.S. 495, 529–530, in connection with rolled steel products, the Court noted the post-war development of the western steel industry and its increasing independence of eastern suppliers.

[42] In 1958, the four largest producers of cold finished steel bars, among the integrated steel companies, accounted for 40% of the total shipped by such companies, the eight largest for 80%; among nonintegrated companies in the field, the four largest accounted for 70%, the eight largest for 81%. Aggre-

Moreover, the Court noted in *Brown Shoe* that approval of that merger might require approval of future merger efforts by "competitors seeking similar market shares." (370 U.S. at 344). In this case, the large national firm previously leading the western market, Republic Steel, entered by acquiring a local firm in California shortly after World War II (Tr. 707). Bliss is now seeking to do the same, and to achieve the lead in the regional market, by acquiring Sierra. If this merger is followed by others of a similar nature, the western market will become a closely restricted oligopoly, divided among the same companies which now dominate the national market.[13]

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gating all companies, the four largest producers accounted for 41% of cold finished steel bars, the eight largest for 64%. See *Concentration Ratios in American Industry*, Report Prepared by Census Bureau for the Subcommittee on Antitrust and Monopoly of Senate Judiciary Committee, 87th Cong., 2d Sess. (Committee Print 1962), pp. 140, 141, 166.

For the different companies leading the national and western markets, compare fns. 2 and 3, *supra*, pp. 5, 7.

[13] Nor does the record support the findings below (Fdgs. 200, 201, App. B) that "no substantial barriers" prevented further entrants into this industry, and that "capital requirements" were "small." Production of bars may be commenced without a very large investment but substantial capital is needed to produce the full range of sizes and shapes which made Sierra an effective competitor (Tr. 999–1002). Robbins, President of Bliss, estimated his company would spend "a minimum of half a million dollars" on improvements to make Bliss "more competitive than Sierra had been able to be out here" (Tr. 166). There is nothing in the record to support the existence of present substantial potential competition to counter the effect of this acquisition. Bliss' willingness to pay a premium price for Sierra (GX 43; Tr. 747) in itself contradicts the alleged ease of entry.

(d) *Absence of Mitigating Factors.*—The Court in *Brown Shoe* concluded its discussion of the horizontal aspects of the merger by observing (370 U.S. at 346) that the company had "presented no mitigating factors, such as the business failure or the inadequate resources of one of the parties that may have prevented it from maintaining its competitive position, nor a demonstrated need for combination to enable small companies to enter into a more meaningful competition with those dominating the relevant markets."

Similarly, in this case, Sierra was a vigorous successful firm and neither it nor Bliss needed the merger to maintain its competitive position (GX 7, pp. 2–3; Tr. 106). Indeed, Bliss chose to acquire Sierra as a deliberate alternative to its already announced plans to build its own plant in California (pp. 7, 8, *supra*). As Bliss' sales agent admitted, competition would have been increased had Bliss built a plant in the four-state area (Tr. 324). This is, therefore, a straightforward example of expansion by acquisition rather than by internal growth—a factor which aggravates, rather than mitigates, the anticompetitive effect of the merger. The Congressional policy in Section 7 was designed to prevent such acquisitions in favor of "expansion through unilateral growth", 370 U.S. at 345, fn. 72. See S. Rep. 1775, 81st Cong., 2d Sess., p. 3; H. Rep. 1191, 81st Cong., 1st Sess., pp. 2–3.

## CONCLUSION

For the foregoing reasons, the decision of the court below was clearly in error, in light of this Court's decision in *Brown Shoe Co.* v. *United States*, 370 U.S. 294. The court below ruled, however, without benefit of this Court's opinion in that case, which bears directly on the issues presented by this appeal. Reconsideration by the district court at this time may resolve the issues permanently; it will at least present ultimately for review a decision explicitly focused on the standards set forth in *Brown Shoe*. We therefore ask that the judgment of the district court be vacated and the case remanded for reconsideration in the light of *Brown Shoe*.

Respectfully submitted.

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AUGUST, 1962.

# APPENDIX A

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil Action No. 753-60-TC

United States of America, Plaintiff, *v.* Bliss & Laughlin, Incorporated, Defendant

MEMORANDUM OPINION

This is a civil antitrust action brought by the United States against Bliss & Laughlin, Incorporated, of Harvey, Illinois, defendant, for alleged violation of Section 7 of the Clayton Act (15 U.S.C. 18). Plaintiff alleges that the defendant's purchase of the assets of Sierra Drawn Steel Corporation in February 1960, then located at Los Angeles, California, may tend to substantially lessen competition in the production and sale of cold finished steel bars in the four-state area of California, Oregon, Washington and Arizona.

The plaintiff has failed to prove that the challenged acquisition has the reasonable probability of substantially lessening competition in the production or sale of cold finished steel bars in these four western states. This case is distinguishable on the significant facts from *Crown Zellerbach Corp.* v. *Federal Trade Commission* (Paragraph 70,038 C.C.H. Trade Reg. Rep., Current Court Decisions, 1961), upon which the plaintiff places much reliance. The defendant and most of the other companies selling cold finished steel bars in this area, collectively ship substantial tonnage into the four-state area from various producing locations in the Midwest and the East. Cf. *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320 (1961). Prior to

the acquisition, the defendant owned no mills located in the four-state area and the overwhelming preponderance of its sales were made elsewhere.

The record in this case shows an abundance of capacity and of competing sellers, a wide choice of suppliers among which the purchasers may choose, a lack of obstacles restraining new entrants into the business, and a lack of power in the defendant to control prices, supply or entry. All of these factors tend to insure vigorous competition.

The plaintiff's motion for a temporary injunction will be denied and the defendant will submit findings of fact and conclusions of law consistent with this memorandum within 30 days.

It is ordered that the Clerk shall this day serve copies of this Memorandum Opinion by United States mail upon the attorneys for the parties appearing in this cause.

Dated January 29, 1962.

THURMOND CLARKE,
*United States District Judge.*

## APPENDIX B

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil Action No. 753-60-TC

United States of America, Plaintiff, *v.* Bliss & Laughlin, Incorporated, Defendant

FINAL JUDGMENT

The above-entitled action came on for trial on December 12, 1961 before the Honorable Thurmond Clarke, Judge of the above entitled Court, upon the Complaint filed herein, on June 28, 1960, by the United States of America, plaintiff, the Answer to the Complaint filed herein on September 6, 1960, by Bliss & Laughlin, Incorporated, defendant, and the Motion for Preliminary Injunction filed herein on November 3, 1964, by the plaintiff. Plaintiff was represented by its attorneys Maxwell M. Bleecher and Malcolm D. MacArthur. Defendant was represented by its attorneys W. Donald McSweeney and James R. Mitchell, of Dallstream, Schiff, Hardin, Waite & Dorschel, Chicago, Illinois, and Maurice Jones, Jr., of Stephens, Jones, LaFever & Smith, Los Angeles, California. Evidence, both oral and documentary, was presented to the Court by the plaintiff and defendant. Having considered the evidence presented and having heard arguments by plaintiff and defendant, the Court rendered its Memorandum Opinion filed herein, on January 29, 1962, and being fully advised in the premises, the Court now makes the following Findings of Fact and Conclusions of Law:

## Findings of Fact

### *The Companies and the Acquisition*

1. Until February 15, 1960, defendant, Bliss & Laughlin, Incorporated ("Bliss & Laughlin") and Sierra Drawn Steel Corp. ("Sierra") were separate corporations. Defendant was, both before and after that date, a corporation organized and existing under the laws of the State of Delaware. Until that date, Sierra was a corporation organized and existing under the laws of the State of California. On February 15, 1960, defendant acquired all of the business and assets, and assumed all of the liabilities, of Sierra. As consideration for the acquisition, Bliss & Laughlin delivered 36,157 shares of its common stock, then worth about $1,100,000.

2. Plaintiff charges a violation of Section 7 of the Clayton Act, alleging that the acquisition of Sierra's assets by defendant may tend substantially to lessen competition or create a monopoly in the production and sale of cold finished steel bars in the area consisting of the states of California, Washington, Oregon and Arizona.

3. Prior to the acquisition of Sierra's assets, defendant was engaged in the production and sale of cold finished steel bars, but it had no plants located in California, Washington, Oregon or Arizona.

4. Prior to the acquisition, Sierra was engaged in the production and sale of cold finished steel bars with its principal plant located at Los Angeles, California, and a smaller plant located at Seattle, Washington. Sierra's principal plant, located at Los Angeles, California, was on premises occupied under a lease which expires on February 28, 1962. Defendant, since the acquisition of Sierra's assets, has

operated its Los Angeles plant under this lease which expires on February 28, 1962.

5. In 1959, the last full year prior to the acquisition, Sierra's total sales amounted to only $2,900,000.

*Definitions*

6. "Cold finished steel bars" means those steel bars made from hot rolled steel bars or coils by drawing, turning and polishing, grinding and polishing, or by a combination of these processes. Cold finished steel bars are produced and sold both in bar form and in coil form. The process of cold finishing is merely the further converting of the hot rolled steel bars.

7. "Cold drawn wire" means that category of wire products which have been finished by the cold drawing process.

8. "Cold rolled steel bars" is a term which is synonymous with the term "cold finished steel bars." The former term is now archaic and is used only occasionally in the steel industry although it continues to be used by the United States Bureau of the Census in reporting imports.

9. "Steel Service Centers" means those steel warehouses which purchase a wide variety of metal and plastic materials, including cold finished steel bars for resale.

10. Cold finished steel bars are made in four basic shapes: rounds, hexagons, squares and rectangles. Some cold finished steel bars are also made in special shapes for specific applications. All shapes are available in a wide variety of sizes and diameters.

11. Cold finished steel bars are used to make various machine parts made on automatic screw machines and also used for some shafting.

12. The most important type of cold finished steel bar from the standpoint of tonnage is the cold drawn round bar.

13. Of the various shapes in which cold finished steel bars are produced, rounds are the most important tonnage-wise in the industry.

14. In terms of tonnages sold a cold drawn bar is the most important type of cold finished steel bar.

15. Cold drawn steel bars, like cold drawn bars of other materials such as brass and aluminum, possess four characteristics which distinguish them from other bars which have not been cold finished: improved finish, improved tolerance, increased tensile and yield strength and improved machinability.

16. "Machinability" is a property possessed by a cold finished steel bar or other machine part material which describes the facility with which the surface of the bar may be removed by cutting tools in fabricating a given machine part.

17. Grinding and polishing is one further method of cold finishing bars to obtain a somewhat better finish than can be obtained by cold drawing and to obtain closer tolerances than can be obtained by other methods of cold finishing.

18. A ground and polished bar is one which has been placed on a machine called a centerless grinder and had a specified amount of surface removed by an abrasive grinding wheel.

19. A turned and polished bar is a bar which has been placed on a machine called a centerless turning mill which has removed the surface of the bar to a specified depth by cutting tools that rotate in a revolving head around the bar.

20. A cold drawn bar is produced by removing the scale on the hot rolled bar, immersing the bar in lime and drawing the bar through a tungsten carbide die.

*Line of Commerce*

21. The production and sale of cold finished steel bars do not constitute a line of commerce.

22. Cold finished steel bars do not constitute a relevant product for the purpose of measuring the effect upon competition of the acquisition of the assets of Sierra by defendant.

23. There is a high degree of interchangeability between cold finished steel bars on the one hand and cold drawn wire, hot rolled steel bars, brass bars, aluminum bars, plastics, and various other machine parts materials, on the other hand.

24. Cold finished steel bars are reasonably interchangeable with and in fact do compete with various other types of machine parts materials including, but not limited to, cold drawn wire, hot rolled steel bars, brass, aluminum, plastics and the cold heading process.

25. Cold finished steel bars and cold drawn wire are within the same line of commerce.

26. Plaintiff has failed to prove that the production and sale of cold finished steel bars constitute a line of commerce separate from the production and sale of other materials used for machine parts such as hot rolled steel bars, brass bars, aluminum bars, and plastics. All of these materials are used for the production of machine parts such as gears, fasteners, and shafts. Improvement in various other types of machine parts materials and in the methods of producing the machine parts themselves, has resulted in a high degree of interchangeability and hence of competition between such machine parts materials and cold finished steel bars.

27. Although users are generally concerned with one or more of the four properties of finish, size and con-

centricity, strength and machinability of cold finished steel, they are constantly searching for substitute materials which will meet their requirements at a lower cost, so that producers of cold finished steel bars are subject to the real restraints of potential, as well as actual, competition from various substitute products.

28. Manufacturers of plastics, cold forged parts, powdered metals, extruded steel tubing, upset forged parts, parts made by the multipress process, rod sheet tube, and molded rubber parts, have all advertised widely in trade publications, journals and newspapers that their respective products may be advantageously used for the production of various parts which are or recently have been made from cold finished steel bars.

29. The process of substitution of various other machine parts materials for cold finished steel bars is a continuous one which reflects, in part, a constant attempt by designers to reduce the weight of their product.

30. The relatively high cost of cold finished steel bars as compared with hot rolled steel bars and wire has exerted continuous pressure on consumers to find less expensive substitutes for cold finished steel bars. The result has been that the sellers of cold finished steel bars have already experienced a substantial amount of competition from substitute materials.

31. As a matter of practice, defendant has continued to solicit the business of those customers who have shifted from the use of cold finished steel bars to a substitute product for the fabrication of a particular part.

32. The existence of substitute materials constitutes a real limitation on the power of sellers of cold finished steel bars to charge higher prices to consumers or to provide lower standards of quality or service.

33. Purchasers of machine parts materials are concerned with a wide variety of characteristics in the materials which they use, including size and concentricity, finish, strength, machinability, corrosion resistance, straightness, platability (the ability of the surface of the bar to accept and retain a surface plating such as nickel, copper or chromium) and weight.

34. Although cold finished steel bars possess characteristics which give them advantages over other substitute materials, it is equally true that substitute materials may themselves possess advantages which make them equally or even more advantageous for particular applications. Thus, several years ago automobile speedometers contained small gears and shafts made from cold finished steel bars and weighing approximately 4½ pounds. Today that same speedometer uses small gears and shafts made from nylon and weighs only slightly more than a pound. Thus, despite the finish, size and concentricity, strength and machinability of cold finished steel bars they were displaced by nylon because for that particular application it had a more important characteristic, namely, lightness.

35. There is a high degree of shifting by those who make machine parts between various machine parts materials for the production of the same part.

36. Of the parts described on Plaintiff's Exhibit 3 as "typical products being made from Sierra cold drawn rounds," a substantial portion are now made also from other machine parts materials including the retaining nut for conduit fittings now made from an extrusion, the threaded studs now made from brass, the shouldered bushings now made from aluminum, and the big shive which is made also from aluminum.

37. Screw Products Corporation of America ("Screw Products"), a typical screw machine shop

jobber located in California, has frequently made the same part out of cold finished steel bars and out of other materials, including various metals and plastics.

38. Screw Products produces dozens of items out of cold finished steel bars as well as out of other machine parts materials, including stainless steel, aluminum, brasses and plastics. All of these materials are used at various times for the production of the same machine part.

39. There are approximately two hundred and fifty screw machine shop jobbers in Southern California.

40. Some of the machine shafts pictured on Plaintiff's Exhibit 33 are made from cold finished steel bars as well as from other machine parts materials.

41. Control rods, fittings, fasteners, shafts and studs, referred to in Plaintiff's Exhibit 19A, are made from cold finished steel bars and from other machine parts materials.

42. Common hexagon nuts, such as that shown on Defendant's Exhibit 1, are made from a wide variety of materials, including aluminum, brass, copper, monel, naval brass, stainless steel, titanium, magnesium, nylon and other plastics, cold finished steel bars, and cold drawn wire.

43. The increasing use of various substitute materials in place of cold finished steel bars is a trend which has been experienced in the western states as well as throughout the entire United States.

44. The American Iron and Steel Institute reported in its 1960 Directory of Iron and Steel Works of the United States and Canada that there was capacity for the production of 437,010 net tons of hot rolled steel bars in the four state area, excluding light shapes and concrete re-enforcement bars.

45. A hot rolled steel bar can be used for the manufacture of most industrial machine parts made from cold finished steel bars.

46. There is a considerable degree of similarity between hot rolled steel bars and cold finished steel bars. Both types of bar come in the same shapes, the same sizes, and the same chemical analyses. Both types of bar are used interchangeably for a large number of end uses. The prices of the two types of steel bars are directly and closely related to each other.

47. Industrial parts are frequently produced on automatic screw machines which, by means of cutting tools, remove portions of the metal or plastic bar and shape the part to its final finished form and dimensions. Changes in the design of automatic screw machines have now made it possible to use hot rolled steel bars and, as a result, producers of cold finished steel bars have experienced increasingly vigorous competition due to substitution of hot rolled steel bars by automatic screw machine parts manufacturers or jobbers.

48. Manufacturers of shafting produce their product both from cold finished and from hot rolled steel bars depending upon the particular requirement of the part and the specific economies of production involved in the particular shaft.

49. Farm equipment manufacturers at one time used cold finished steel bars for shafting in hay rakes and similar applications. Subsequently such manufacturers shifted in large part to the use of hot rolled steel bars for the production of these parts. Some cold finished steel bars are still used in the manufacture of this particular machine part.

50. The main drive spline shown on Plaintiff's Exhibit 33, page 4, is now made, in part, from a special

hot forged hot rolled bar produced by Republic Steel Corporation.

51. Dual wheel nuts are made from cold finished steel bars and from hot rolled steel bars.

52. The Ford Motor Company previously used 2,500 tons of cold finished steel bars annually to make a fan hub in the engine. This part is now made from hot rolled steel bars of the same grade.

53. The Pontiac Motor Division of General Motors Corporation ("Pontiac") is at present using 1,000 tons of 1 inch round cold finished steel bars to make piston rings. After the completion of the 1962 model Pontiac will extrude this part from the same grade of hot rolled steel bars.

54. The Detroit Transmission Division, General Motors Corporation, previously used 250 tons of cold finished steel bars annually to make a part in the hydromatic transmission. That part is now made from hot rolled steel bars of the same grade.

55. The Detroit Transmission Division, General Motors Corporation, previously used 50 tons of cold finished steel bars annually to make a sun gear in the hydromatic transmission. The Detroit Transmission Division now makes this machine part from hot rolled steel bars of the same grade.

56. Hot rolled steel bars have been used as a substitute for cold finished steel bars in the manufacture of cement-finishing equipment.

57. John Deere-Killifer, a division of Deere & Co., producers of agricultural equipment, has recently shifted to the use of hot rolled steel bars as a substitute for cold finished steel bars. This shift has occurred not only in the company's Los Angeles plants but in other Deere plants throughout the United States.

58. Mills Iron Works, a manufacturer of oil field equipment, has recently shifted to the use of hot rolled steel bars as a substitute for cold finished steel bars in the manufacture of plugs and pipeline fittings.

59. In 1961 Safeway Steel Products shifted to the use of hot rolled steel bars as a substitute for cold drawn steel bars.

60. In its 1961 model car Chrysler Corporation ("Chrysler") used approximately 19 tons of cold finished steel bars to make speedometer gears. In its 1962 model, Chrysler shifted to the use of hot rolled steel bars to make this machine part.

61. Chrysler in its 1961 model used approximately 180 tons of cold finished steel bars for the production of a differential pinion. In 1962 Chrysler shifted to the use of hot rolled steel bars for the production of this machine part.

62. Chrysler used 144 tons of cold finished steel bars for the production of a transfer case lower drive shaft in its 1961 model. In 1962 Chrysler shifted to the use of hot rolled steel bars to manufacture this machine part.

63. In 1961 Chrysler used 108 tons of cold finished steel bars to make a clutch gear. In 1962 Chrysler shifted to hot rolled steel bars to make this same machine part.

64. In 1961 Chrysler used 36 tons of cold finished steel bars to make another speedometer gear. In 1962 Chrysler shifted to the use of hot rolled steel bars to produce this machine part.

65. In 1961 Chrysler used 240 tons of cold finished steel bars for the production of a transverse reverse idler gear. In 1962 the company shifted to the use of hot rolled steel bars to make this part.

66. In 1961 Chrysler used 42 tons of cold finished steel bars to make an idler gear. In 1962 the com-

pany shifted to the use of hot rolled steel bars to manufacture this machine part.

67. In 1960 Mills Iron Works of Los Angeles, California commenced manufacturing pipe fittings from hot rolled steel bars.

68. In 1958 Manufacturers' Machine Service of Detroit, Michigan commenced manufacturing dual wheel nuts from hot rolled steel bars, thus displacing approximately 1200 tons of cold finished steel bars previously sold to this customer.

69. In 1957 Technibilt Corporation substituted a hot rolled round edge flat steel bar for a 3/8 by 1 inch flat cold drawn steel bar.

70. In 1957 the Van Dee Manufacturing Company substituted a 3/4 inch round hot rolled steel bar for the cold finished steel bars which they had previously used.

71. In 1957 The Lewis Allis Company shifted to the use of hot rolled steel bars in place of cold finished steel bars.

72. The heading process is a means for gathering up metal from bars or wire in coil form and subjecting it to a series of extrusions and confinements within a multi-stage die, so that after five to seven strokes, the finished part has been formed. The process can be done either hot or cold and can use either hot rolled rod, hot rolled bars or cold drawn wire. The heading process of producing parts has enabled hot rolled bars, rods, and wire to compete more effectively with cold finished steel bars.

73. In 1960 the Weatherhead Company of Columbia City, Indiana commenced manufacturing hose ends by the cold heading process, thus displacing a substantial amount of cold finished steel bars previously sold to this customer.

74. Recently the Weatherhead Company of Columbia City, Indiana commenced manufacturing tube nuts by the cold heading process, thus displacing approximately 1800 tons of cold finished steel bars previously sold to this customer.

75. Recently the Grip Nut Company of South Whitley, Indiana commenced manufacturing grip nuts by the cold heading process, thus displacing approximately 1800 tons of cold finished steel bars previously sold to this customer.

76. In 1960 Zimmer-Lightbody Industries, Inc. commenced manufacturing common hexagon tube nuts by the cold heading process thus displacing approximately 700 tons of cold finished steel bars previously sold to this customer.

77. During the period 1958–1959 Detroit Diamond Screw Division of Fada Industries commenced manufacturing common hexagon tube nuts by the cold heading process, thus displacing approximately 500 tons of cold finished steel bars previously sold to this customer.

78. Hi Vol Products, Inc. recently commenced manufacturing common hexagon tube nuts by the cold heading process thus displacing approximately 500 tons of cold finished steel bars previously sold to this customer.

79. During the period 1956 to the present, A. C. Spark Plug Division of General Motors Corporation has shifted to the use of the cold heading process to manufacture spark plug shells, thus displacing approximately 6,000 tons of cold finished steel bars previously sold to this customer.

80. In 1959 Detroit Diamond Screw Division of Fada Industries commenced manufacturing common hexagon nuts by the cold heading process thus displac-

ing approximately 500 tons of cold finished steel bars previously sold to this customer.

81. In 1960, more than 100,000 tons of cold drawn wire were shipped into California, Washingon, Oregon and Arizona.

82. The American Iron and Steel Institute reported in its 1960 Directory of Iron and Steel Works of the United States and Canada that there was capacity for the production of 311,450 tons of plain wire in the four state area.

83. The following companies have extensive facilities in the four state area for the production of cold drawn wire in substantial quantities:

Bethlehem Steel Company
United States Steel Corporation
Colorado Fuel & Iron Corporation
Davis Wire and Cable Corporation

The cold drawn wire produced by these firms is interchangeable and directly competitive with the largest single category of cold finished steel bars produced and sold in the four state area—cold drawn round bars less than 1¼ inches in diameter.

84. Cold drawn wire competed with slightly less than 25% of the total production of cold finished steel bars in 1961 nationally.

85. Cold drawn bars in sizes under 1¼ inches in diameter accounted for a relatively larger share of cold finished steel bar production in the area consisting of California, Oregon, Washington and Arizona than nationally. Cold drawn wire is completely interchangeable with about 40 to 45% of the cold finished steel bars produced in this area.

86. The Bay City plant of Chevrolet Division of General Motors Corporation ("Chevrolet"), Bay City, Michigan used approximately 9,000 tons of undersized 1 inch cold finished round bars for the manu-

facture of pistons in the Chevrolet engine in 1961. This part is now being made by this Chevrolet plant from heading wire.

87. The Sheffield Division of Armco Steel Company produces cold finished steel bars at its Kansas City, Missouri plant although it is listed in the American Iron and Steel Institute Directory of Iron and Steel Works of the United States and Canada for 1960 as having capacity only for the production of cold drawn wire at that plant. This fact illustrates the practical difficulties in the steel industry in distinguishing between cold drawn wire and cold finished steel bars in those size ranges where the two "products" overlap.

88. Cold drawn wire is competitive with cold finished steel bars in the production of small shafts, such as those used in speedometers.

89. Cold drawn wire and cold finished steel bars compete directly as materials which they are equally adaptable for the production of studs. The stud can be made from a ¾ inch cold drawn round bar, placed on a screw machine, and turned to the desired shape. A one-half inch round wire can also be used, and the head enlarged or "upset" by use of the cold heading process to a ¾ inch round diameter.

90. Cold finished steel bars and cold drawn wire compete in the production of fasteners.

91. Sparkplug shells are at the present time made from cold finished steel bars, wire, and hot rolled steel bars.

92. Tube nuts are produced from cold finished steel bars and from wire.

93. Hexagon nuts are produced from both cold finished steel bars and wire.

94. The tendency in recent years has been to produce cold drawn wire in larger and larger sizes until, at the present time, the product is produced in sizes

up to 1¼ inches in diameter. In the size ranges where cold drawn bars and cold drawn wire overlap, they are virtually identical.

95. There is a high degree of cross-elasticity of demand between brass bars and cold finished steel bars which is reflected by the fact that at times when brass prices drop, there is a substantial shifting to that material. Conversely, when brass prices rise, fabricators of machine parts materials tend to shift back to the use of cold finished steel bars.

96. Brass is competitive with approximately 40% of the total tonnage of cold finished steel bars produced in 1961.

97. Many bushings are made out of brass and bronze as well as cold finished steel bars.

98. Companies such as Bridgeport Brass, Scoville Mfg. and the Aluminum Company of America did effectively compete with Sierra for the business of its customers.

99. In 1959 Sierra was in competition with the Bridgeport Brass Company which produced a one-inch round free-machining brass bar which for some purposes was interchangeable with and substitutable for a one-inch round cold finished steel bar.

100. In the year 1959 a number of jobbers who were customers of Sierra shifted from using cold finished steel to cold finished brass bars.

101. Although brass is initially somewhat more expensive than cold finished steel bars, it may actually be more economical for the consumer, depending upon the fabrication process used.

102. Steel service centers carry not only cold finished steel bars but cold finished aluminum and brass bars all of which are sold competitively with one another.

103. In 1961 Killian Manufacturing Corporation of Syracuse, New York, commenced producing various molded parts from nylon, thus displacing approximately 125 tons annually of cold finished steel bars previously sold to this customer.

104. Clemson Brothers, Inc. recently commenced producing lawnmower pinion gears from molded nylon, thus displacing an undetermined amount of tonnage previously sold to this customer.

105. Recently, Ward Machine Company, Brockton, Massachusetts, E. S. Morton Company, Brockton, Massachusetts, and the Kohler Manufacturing Company, Marlboro, Massachusetts, commenced producing shoe thimbles from cold drawn tubing, thus displacing an undetermined amount of tonnage previously sold to these customers.

106. Recently, Centralab Division of Globe-Union, Inc., Milwaukee, Wisconsin, commenced producing various types of volume controls from die casting and phenolic plastic respectively, thus displacing a total of approximately 210 tons of cold finished steel bars previously sold to this customer.

107. In 1960 Radiant Manufacturing Corporation shifted to the use of wire as a substitute for cold finished steel bars.

108. In 1960 Holtgrive and Co., sales representatives of Bliss & Laughlin, reported a number of instances of substitution of cold headed products and nylon bearings in parts which had previously been produced from cold finished steel bars.

109. In 1957 the Dexter Machine Products Company shifted from the use of cold drawn steel bars to the use of nylon.

110. During 1959 Sierra Drawn Steel Corporation lost some business to producers of various plastics.

111. The competition between brass bars, aluminum

bars, and cold finished steel bars has resulted in a highly fluid situation in which users may shift from cold finished steel bars to brass or aluminum and, eventually back to cold finished steel bars and sometimes back again to aluminum or brass.

112. The lighter weight of aluminum has resulted in its substitution for cold finished steel bars in a wide variety of machine parts. Examples of substitution of aluminum for cold finished steel bars are shives and pulleys which at one time were made from cold finished steel bars and at the present time are made from aluminum die castings.

113. During 1959 Duro Products Company in Los Angeles shifted from the use of cold finished steel bars for the production of conduit fittings to the use of aluminum die castings.

114. In 1959 Screw Products of America shifted in part from the use of cold finished steel bars to the use of aluminum bars for the production of shives and pulleys.

115. The aluminum ring, the socket, and the missile part shown on Defendant's Exhibit ZZ were at one time made from cold finished steel bars.

116. Screw Products Corporation of America has machined various piece parts from copper alloy and from aluminum alloy, thus displacing an undetermined amount of cold finished steel bars previously purchased by this customer.

117. Screw Products Corporation of America, Los Angeles, California, has manufactured various machine parts from aluminum alloy, thus displacing an undetermined quantity of cold finished steel bars.

118. Although Plaintiff's Exhibit 33, an advertisement by Bliss & Laughlin, refers to an automotive drive shaft as a typical use of cold finished steel bars, at the present time the only drive shaft which is

produced from a cold finished steel bar is that made for the Rambler Classic. All other cars with the exception of the Pontiac Tempest are using tubing. The Pontiac Tempest is now using a hot rolled steel bar to make the so-called rope shaft—a type of drive shaft.

119. Cold drawn tubing is used for shafting, including the drive shaft of some automobiles.

120. During 1959, Utility Appliance Corporation, a customer of Sierra, shifted from the use of cold finished steel bars to cold drawn steel tubing for the production of shafting.

121. Utility Appliance Corporation, a manufacturer of blowers and fans for furnaces and air coolers, has in recent years shifted to the use of tubing as a substitute for cold finished steel bars.

122. In 1957 American Motors Corporation substituted tubing for cold finished steel bars on some models of its automobile.

123. During 1960 the Duro Fittings Company, Los Angeles, California, commenced manufacturing conduit fittings from zinc die castings, thus displacing an undetermined amount of tonnage of cold finished steel bars previously sold to this customer.

124. In 1961 the Chevrolet-Tonawanda Division of General Motors Corporation, Tonawanda, New York, commenced manufacturing crankshaft gears from castings, thus displacing approximately 500 tons of cold finished steel bars previously purchased by this customer.

125. Conduit fittings are produced from cold finished steel bars and from castings and strip steel.

126. The Chevrolet Flint Manufacturing Company had an annual usage of 2,400 tons of cold finished steel bars used for the production of a crank gear. This item is now manufactured by casting.

127. In 1960 Johnson Products Company substituted castings for cold drawn steel bars in the manufacture of tappets.

128. Powdered metal competed for approximately 5% of the total production of cold finished steel bars in 1961.

129. The Chevrolet Flint Manufacturing Company previously used 360 tons annually of cold finished steel bars to make an oil pump drive shaft. This item is now made from powdered metal.

130. Manufacturers of deep well drilling pumps use both cold finished steel bars and stainless steel bars for their shafting.

131. In 1961 Delco Products Division of General Motors Corporation shifted to the use of extrusions in the manufacture of parts previously made from cold drawn steel bars.

132. Exotic metals have in recent years become more important in the production of various machine parts by automatic screw machine shop jobbers as a substitute for cold finished steel bars. There is some shifting back and forth between cold finished steel bars and exotic metals.

133. In 1961 Standard Pressed Steel Company of Jenkintown, Pennsylvania, commenced producing various hexagon grip nuts from leaded steel, thus displacing approximately 150 tons of cold finished steel bars sold to this customer annually.

134. In 1961 F. C. Phillips, Inc. of Stoughton, Massachusetts, commenced producing golf spike assemblies from cold rolled strip steel, thus displacing approximately 100 tons of cold finished steel bars sold to this customer annually.

135. In 1961 the Chevrolet Division of General Motors Corporation shifted to the use of sintered iron

parts for oil pump gears which had previously been made from cold drawn steel bars.

136. In 1961 the M. J. Grass Screw Machine Products Company of Buffalo, New York, commenced producing propane gas tank bushings from stampings, thus displacing approximately 150 tons of cold finished steel bars previously sold to this customer.

137. American Drill Bushing, a producer of drill bushings, and a present consumer of cold finished steel bars is currently experimenting with substitute materials, including machinable carbide produced by Chromalloy.

138. In 1961 H & H Screw Machine Company, Buffalo, New York, Alger Manufacturing Company, Ontario, California, and Standard Pressed Steel Company of Jenkintown, Pennsylyania, commenced producing bullet cores from lead, thus displacing approximately 300 tons of cold finished steel bars sold annually by the industry to these customers.

139. In 1958 Ohio Brass Company shifted to the use of forgings in place of cold finished steel bars.

140. In 1958 Auto Lite Company shifted to the use of nylon in place of cold finished steel bars.

*The Geographic Market*

141. In order to determine whether there is a probability that an acquisition will have an effect on competition, it is necessary to determine the product or products in which competition actually exists. It is then necessary to determine the geographic area in which this product or these products are produced, sold and used. Although the Court has found, as indicated in the Findings above, that plaintiff has failed to prove that the production and sale of cold finished steel bars constitute a line of commerce under Section 7 of the Clayton Act, nevertheless for the purpose of

determining whether or not the area consisting of the states of California, Oregon, Washington and Arizona constitutes a section of the country under Section 7 of the Clayton Act, the Court will assume that the production and sale of cold finished steel bars constitute a line of commerce.

142. The area consisting of California, Washington, Oregon and Arizona is not an appropriate section of the country for measuring the effect on competition of the acquisition of the assets of Sierra by defendant.

143. The area consisting of California, Washington, Oregon and Arizona is not a market for the production and sale of cold finished steel bars. Most of the cold finished steel bars sold in that area are shipped in from points of origin outside the area and the determinants of price and of supply lie outside the area.

144. There are no economic obstacles to the shipment of cold finished steel bars into the area consisting of California, Washington, Oregon and Arizona from outside sources for sale in that area.

145. Plaintiff has failed to addnce any evidence of economic factors tending to establish that the area consisting of the states of California, Oregon, Washington and Arizona comprises an appropriate geographic area for measuring the effect on competition of the acquisition of Sierra's assets by defendant.

146. Plaintiff has failed to adduce any evidence of economic factors tending to separate the area consisting of California, Washington, Oregon and Arizona from other parts of the United States in trade and commerce in steel or in cold finished steel bars.

147. Most of the cold finished steel bars sold in California, Oregon, Washington and Arizona were shipped into these states from the following loca-

tions in the midwestern or eastern sections of the United States in 1957, 1959 and 1960:

| | |
|---|---|
| Cumberland, Md. | Massillon, Ohio |
| Harrison, N.J. | Warren, Ohio |
| Camden, N.J. | Cleveland, Ohio |
| Buffalo, N.Y. | Canton, Ohio |
| Syracuse, N.Y. | Gary, Ind. |
| Beaver Falls, Pa. | Hammond, Ind. |
| Bethlehem, Pa. | Harvey, Ill. |
| Pittsburgh, Pa. | Chicago, Ill. |
| Ambridge, Pa. | Waukegan, Ill. |
| Midland, Pa. | |

148. The tonnage shipped into the states of California, Washington, Oregon and Arizona from outside of this area accounted for at least 56.2% in 1957, 53.4% in 1959, and 67.2% in 1960 of the total cold finished steel bars sold in that area.

149. The prices of hot rolled steel bars and the prices of cold finished steel bars are established nationally by integrated eastern steel producers, and the prices of cold finished steel bars in the area of California, Washington, Oregon and Arizona are determined by nationally established prices.

150. The base price charged by Sierra for cold finished steel bars produced from hot rolled steel bars which were not produced on the west coast was determined by taking the Chicago base price plus the full freight and rounding off to even five or ten cents per hundredweight.

151. The price of cold finished steel bars in the area of California, Oregon, Washington and Arizona is closely and directly related to the price of cold finished steel bars outside that area so that price changes occurring in the midwestern and eastern portions of the United States are reflected to the same

degree in the area of California, Oregon, Washington and Arizona.

152. The price of hot rolled steel bars in the area of California, Oregon, Washington and Arizona is closely and directly related to the price of hot rolled steel bars outside that area so that price changes occurring in the midwestern and eastern portions of the United States are reflected to the same degree in the area of California, Oregon, Washington and Arizona.

153. The price of hot rolled steel bars in the area of California, Oregon, Washington and Arizona is directly and closely related to the price of cold finished steel bars in that area, and the price of cold finished steel bars in the midwestern and eastern portions of the United States is directly and closely related to the price of hot rolled steel bars in that same area.

154. The "extra cards" used by the various producers of cold finished steel bars reflect the prices over and above the base price which is charged for a particular shape, grade and quality of cold finished steel bar. The extra cards of all companies give the same prices with minor variations in certain quantity categories in the case of LaSalle Steel Co. The extra cards are used throughout, and the prices therein applied to the entire nation.

155. The area of California, Washington, Oregon and Arizona does not represent a significant or important producing center of cold finished steel bars. In 1960 the Bureau of the Census reported a total of approximately 1,575,000 tons of cold finished steel as produced in the United States. The Census also reported that only 20,917 tons, or 1.3% of national production, were produced in this area.

156. By way of contrast, the middle Atlantic states of New York, New Jersey and Pennsylvania accounted for 544,958 tons of cold finished steel bars produced in 1959 and for 578,581 tons in 1960. The East North Central states including Ohio, Indiana, Illinois, Michigan and Wisconsin, accounted for 893,546 tons of cold finished steel bar production in 1959 and for 857,194 tons in 1960.

157. From the standpoint of consumption of cold finished steel bars, the area of California, Oregon, Washington and Arizona is an unimportant and insignificant region to the sellers. Only approximately 4% of the cold finished steel bars produced in the nation are consumed in this area.

158. Consumers of cold finished steel bars in California, Washington, Oregon and Arizona purchase those bars in a national market.

159. Measured in terms of capacity, the area of California, Oregon, Washington and Arizona is an insignificant and unimportant producing center for cold finished steel bars. The American Iron and Steel Institute reports a total of 4,175,000 tons of capacity for 1960 in the entire United States. The reported capacity in the area of California, Oregon, Washington and Arizona is 112,000 tons, which is equivalent to approximately 2.7% of national capacity. When the capacities for M & A Steel Sales and Service, Inc. and Rods, Inc., neither of which reports to AISI, are added to the capacities shown by the American Iron and Steel Institute, the percentage of capacity represented by the area of California, Oregon, Washington and Arizona is increased from 2.7 to approximately 2.9% of the national capacity.

160. These figures actually magnify the importance of the area of California, Oregon, Washington and Arizona unduly because they do not include the ca-

pacity of eastern producers not reporting to AISI but listed on Defendant's Exhibit A42.

161. About 2.7% of national capacity to produce cold finished steel bars is located in the area of California, Oregon, Washington and Arizona while more than 97% of the national capacity to produce these bars is located outside this area.

162. The following tabulation shows the plants reported by the American Iron and Steel Institute Directory of Iron and Steel Works of the United States and Canada, 1960, as having capacity for the production of cold finished steel bars together with the location of the plants and their reported capacity:

| Company—Plant | Reported capacity (tons) |
|---|---|
| 1. Allegheny Ludlum Steel Corp.: | |
| Dunkirk, N.Y. | 15,300 |
| Watervliet, N.Y. | 11,200 |
| 2. Armco Steel Corp.: Baltimore, Md. | 21,000 |
| 3. Atlantic Wire Co.: Branford, Conn. | 1,200 |
| 4. Bethlehem Steel Co.: | |
| Bethlehem, Pa. | 30,000 |
| Lackawanna, N.Y. | 36,000 |
| 5. Bliss & Laughlin, Inc.: | |
| Harvey, Ill. | 235,000 |
| Buffalo, N.Y. | 165,000 |
| Detroit, Mich. | 55,000 |
| Mansfield, Mass. | 40,000 |
| Los Angeles, Calif. | 48,000 |
| Seattle, Wash. | 4,000 |
| 6. Carpenter Steel Co.: | |
| Reading, Pa. | 27,000 |
| Bridgeport, Conn. | 28,200 |
| 7. Columbia Steel & Shafting Co.: Carnegie, Pa. | 135,000 |
| 8. Compressed Steel Shafting Co.: Readville, Mass. | 20,000 |
| 9. Copperweld Steel Co.: Warren, Ohio | 55,100 |
| 10. Crucible Steel Company of America: | |
| Midland, Pa. | 113,400 |
| Pittsburgh, Pa. | 7,800 |
| Syracuse, N.Y. | 46,000 |
| Harrison, N.J. | 2,200 |
| 11. Cumberland Steel Co.: Cumberland, Md. | 50,000 |
| 12. Cuyahoga Steel & Wire Co.: Cleveland, Ohio | 25,000 |
| 13. Eaton Manufacturing Co.: Massillon, Ohio | 27,000 |
| 14. Firth Sterling, Inc.: McKeesport, Pa. | 2,800 |

| | Reported capacity (tons) |
|---|---|
| 15. Fitzsimmons Steel Co.: Youngstown, Ohio | 50,000 |
| 16. Fort Howard Steel & Wire Division, Research Parts & Engr. Corp.: Green Bay, Wis | 21,000 |
| 17. Harper Co., H. M.: Morton Grove, Ill | 7,800 |
| 18. International Harvester Co.: South Chicago, Ill | 58,240 |
| 19. Jones & Laughlin Steel Corp.: | |
| Pittsburgh, Pa | 300,000 |
| Hammond, Ind | 50,000 |
| Warren, Mich | 120,000 |
| Willimantic, Conn | 30,000 |
| 20. Joslyn Mfg. & Supply Co.: Fort Wayne, Ind | 25,000 |
| 21. Keystone Drawn Steel Co.: Spring City, Pa | 40,000 |
| 22. La Salle Steel Co.: Hammond, Ind | 310,000 |
| 23. Latrobe Steel Co.: Latrobe, Pa | 1,500 |
| 24. Moltrup Steel Products Co.: Beaver Falls, Pa | 72,000 |
| 25. Nelsen Steel & Wire Co.: Franklin Park, Ill | 150,000 |
| 26. Pacific Tube Co.: Los Angeles, Calif | 40,000 |
| 27. Pilgrim Drawn Steel Division, Automotive Materials Corp.: Plymouth, Mich | 150,000 |
| 28. Plymouth Steel Corp.: Detroit, Mich | 50,000 |
| 29. H. K. Porter, Inc., Vulcan-Kidd Steel Division: Aliquippa, Pa | 3,000 |
| 30. Precision Drawn Steel Co.: Camden, N.J | 77,000 |
| 31. Republic Steel Corp., Union Drawn Steel Division: | |
| Massillon, Ohio | 183,000 |
| Beaver Falls, Pa | 108,000 |
| Gary, Ind | 140,000 |
| Hartford, Conn | 55,000 |
| Los Angeles, Calif | 24,000 |
| 32. Superior Drawn Steel Co.: Monaca, Pa | 30,000 |
| 33. Timken Roller Bearing Co.: Gambrinus, Ohio | 125,000 |
| 34. United States Steel Corp., American Steel & Wire Division: Cleveland, Ohio | 84,510 |
| 35. United States Steel Corp., Central Operations: | |
| Duquesne, Pa | 7,500 |
| South Chicago, Ill | 3,400 |
| 36. Universal-Cyclops Steel Corp.: Bridgeville, Pa | 7,350 |
| 37. Vanadium-Alloys Steel Co., Anchor Drawn Steel Company: Latrobe, Pa | 3,000 |
| 38. Western Automatic Machine Screw Co.: Elyria, Ohio | 52,500 |
| 39. Wyckoff Steel Co.: | |
| Ambridge, Pa | 243,500 |
| Chicago, Ill | 146,400 |
| Newark, N.J | 63,300 |
| Putnam, Conn | 30,500 |
| 40. Youngstown Sheet & Tube Co.: Youngstown, Ohio | 90,000 |

163. A very significant proportion of the hot rolled steel bars which are used for the production of cold finished steel bars is not produced in the states of California, Washington, Oregon and Arizona.

164. The area of California, Washington, Oregon and Arizona was an insignificant area of sales endeavor on the part of Bliss & Laughlin. In 1959, the last full year immediately prior to the acquisition, sales in that area accounted for only 1.6% of its total sales of cold finished steel bars in the United States. Prior to the acquisition Bliss & Laughlin was not represented in the area of California, Washington, Oregon and Arizona by its own employees as salesmen but was represented by a manufacturer's representative who simultaneously represented at least 11 other companies and sold a great variety of other products. At the same time, Sierra sold all but an infinitesimal portion of its cold finished steel bars in this area, except during the abnormal conditions prevailing during the Korean Emergency. Thus, the area of California, Washington, Oregon and Arizona was not an area of primary, or even significant, competitive effort for both the acquired and acquiring firms.

165. Of the twenty or more companies which compete with Bliss & Laughlin in the sale of cold finished steel bars in the west coast area, almost all sell their steel products on a national basis.

166. Mill suppliers located outside the area of California, Washington, Oregon and Arizona who ship into and sell cold finished steel bars in this area sell at the same price as do the producers of cold finished steel bars located in the area of California, Washington, Oregon and Arizona. Thus, consumers have no prefeference in terms of price for local suppliers.

167. Producers located in the area of California, Washington, Oregon and Arizona use the same base price and the same prices for extras in pricing cold finished steel bars as do producers located outside of this area for sales within the area.

*Effect Upon Competition*

168. In order to determine whether an acquisition may tend to substantially lessen competition or create a monopoly, it is necessary to determine a line of commerce and a section of the country in which the effect of the acquisition is to be measured. Although the Court has found, as indicated in the Findings above, that the plaintiff has failed to prove that the production and sale of cold finished steel bars constitute a relevant line of commerce and has failed to prove that the states of California, Oregon, Washington and Arizona constitute an appropriate section of the country for measuring the effect upon competition of the challenged acquisition, nevertheless, for the purpose of determining the effect upon competition of this challenged acquisition, the Court will assume that the production and sale of cold finished steel bars constitute the relevant line of commerce and that these four states constitute a section of the country within the meaning of Section 7 of the Clayton Act.

169. Defendant's acquisition of Sierra's assets has not had the effect of substantially lessening competition in the production and sale of cold finished steel bars in California, Oregon, Washington and Arizona.

170. Defendant's acquisition of Sierra's assets does not tend to substantially lessen competition in the production and sale of cold finished steel bars in California, Oregon, Washington and Arizona.

171. The production and sale of cold finished steel bars in the area of California, Oregon, Washington and Arizona are now and for some time have been highly competitive areas of business endeavor characterized by the large number of firms competing for the business available in this area, by the quality of the product sold, and the reasonableness of prices charged. The reasonable probabilities are that the cold finished steel bar segment of the machine parts materials business in this area will become even more vigorously competitive in the future.

172. No buyer of cold finished steel bars has been adversely affected by defendant's acquisition of Sierra's assets.

173. There is no reasonable probability that any buyer of cold finished steel bars will be adversely affected by defendant's acquisition of Sierra's assets.

174. No seller of cold finished steel bars has been adversely affected by defendant's acquisition of Sierra's assets.

175. There is no reasonable probability that any seller of cold finished steel bars will be adversely affected by defendant's acquisition of Sierra's assets.

176. There is no reasonable probability that the effect of the acquisition of the assets of Sierra by Bliss & Laughlin will either substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country.

177. The horizontal effect of the acquisition is insubstantial. The defendant, even after the acquisition of the assets of Sierra, will be confronted with strong and vigorous competition. This acquisition will have no adverse effect on price or quality of product.

178. The acquisition of the assets of Sierra by defendant has no vertical effect.

179. In the production and sale of cold finished steel bars in the states of California, Oregon, Washington and Arizona, there is an abundance of capacity and of competing sellers, a wide choice of suppliers among which the purchasers may choose, a lack of obstacles restraining new entrants into the business, and a lack of power in the defendant to affect prices, supply, or entry. All of these factors tend to insure vigorous competition.

180. In addition to the vigorous competition which Bliss & Laughlin has experienced and will continue to experience from other mill suppliers of cold finished steel bars, defendant is subject to increasingly vigorous and effective competition from the sellers of other closely related types of machine parts materials, such as cold drawn wire, hot rolled steel bars, brass bars, aluminum bars, and plastic materials for the business of machine parts fabricators. The restraints and pressures on Bliss & Laughlin resulting from this competition are additional factors which tend to insure the maintenance of strong competition in the sale of materials used for the fabrication of machine parts.

181. Bliss & Laughlin lacks power to affect the price of cold finished steel bars sold either in the area of California, Oregon, Washington, and Arizon or in the nation as a whole. The price of cold finished steel bars is largely determined by the price of hot rolled steel bars and the cost of labor, both of which are factors over which Bliss & Laughlin has no control.

182. The number of competitors in the sale of cold finished steel bars in the area of California, Oregon, Washington and Arizona and their relative strength are such that there is no reasonable probability that defendant, after the acquisition, will have any abil-

ity, and certainly no increased ability, to restrict the supply of cold finished steel bars in the area, to unduly increase its percentage of the total sales in the area, to influence the price of cold finished steel bars, or to prevent customers from turning to numerous and readily available alternative sources of supply.

183. The acquisition of the assets of Sierra by defendant did not eliminate any competition except that between the acquired and acquiring firms.

184. The competition between defendant and Sierra prior to the acquisition was insignificant.

185. Defendant's sales in the area of California, Oregon, Washington and Arizona were declining in the years prior to the acquisition.

186. Prior to the acquisition, most of the sales of Bliss & Laughlin in the area of California, Oregon, Washington and Arizona were in shapes and sizes of cold finished steel bars not produced by Sierra and not produced in the four state area.

187. Prior to the acquisition, Bliss & Laughlin, in selling cold finished steel bars in California, Oregon, Washington and Arizona, was only an indirect and insubstantial competitor of Sierra.

188. Prior to the acquisition, Bliss & Laughlin was not a competitor of Sierra in the production of cold finished steel bars in the area of California, Oregon, Washington and Arizona.

189. Prior to the acquisition, defendant was an insignificant factor in the sale of cold finished steel bars in the states of California, Oregon, Washington and Arizona.

190. The acquisition in question has not resulted in a decrease in the capacity for the production of cold finished steel bars in the area of California, Oregon, Washington and Arizona.

191. There has been no decrease in the number of sellers of cold finished steel bars in the area of California, Oregon, Washington and Arizona as a result of the acquisition.

192. Before representing defendant, as a manufacturer's representative, in the sale of cold finished steel bars in the area of California, Oregon, Washington and Arizona, Mr. Joseph Lawrence represented Superior Drawn Steel Company. After the termination of his agency relationship with defendant, Mr. Lawrence commenced representing Precision Drawn Steel Co., a producer which then sold cold finished steel bars in this area. Mr. Lawrence had opportunities to represent numerous other producers of cold finished steel bars which had not previously sold in the four-state area. These other producers of cold finished steel bars in 1960 indicated an interest in selling their products in California, Oregon, Washington and Arizona.

193. All of the producers of cold finished steel bars in the United States are either actual or potential competitors in the sale of cold finished steel bars in California, Oregon, Washington and Arizona.

194. The mill suppliers of cold finished steel bars that serve the area of California, Oregon, Washington and Arizona are sufficiently numerous and sufficiently large in production capacity to give adequate and competitive service in this area.

195. Capacity for production of cold finished steel bars in the area of California, Oregon, Washington and Arizona is more than adequate to meet the foreseeable needs of consumers in that area. Thus, producers with plants in the four-state area had an aggregate capacity of some 122,000 tons of cold finished steel bars, slightly less than twice the sales listed on Plaintiff's Exhibit 1 of 63,000 tons.

196. The sixteen producer-sellers of cold finished steel bars in the area of California, Oregon, Washington and Arizona shown in Plaintiff's Exhibit 1 accounted for approximately 3.1 million tons or approximately 75% of the total capacity reported by the American Iron and Steel Institute for 1960. These firms accounted for approximately 35 different cold finished steel bar producing plants out of a total of some 63 plants in the United States, an amount equivalent to 56% of the total plants in the United States.

197. Capacity as reported by the American Iron and Steel Institute for the production of cold finished steel bars has tended to increase more rapidly than has production of cold finished steel bars. Between 1948 and 1960 this capacity increased by about 958,000 annual tons, or about 30%. Between 1957 and 1960 there was a significant increase in the nationwide cold finished steel bar capacity from 4,000,000 tons to 4,175,000 tons, an increase of about 166,000 annual tons in that three-year period. During the same period the production of cold finished steel bars only increased from 1,463,000 tons in 1957 to 1,575,000 tons in 1960, an increase of only 112,000 tons. As capacity increases relative to sales, competition tends to become more and more vigorous.

198. A number of companies which use cold finished steel bars do their own cold finishing, and purchase hot rolled steel only. Examples of such firms are Russell, Birdsall and Ward Company, and Russell Bolt Company. The ability of consumers to cold finish their own steel bars constitutes another source of competitive pressure on mill suppliers of cold finished steel bars of which the plaintiff has taken no account.

199. Large integrated steel producers including Jones & Laughlin, Bethlehem, Republic and U. S. Steel account for almost 33% of the total sales of cold

finished steel bars shown on Plaintiff's Exhibit 1 in the states of California, Oregon, Washington and Arizona. By reason of their large absolute size, their control over capital, their control over raw materials, including their control over the manufacture and pricing of hot rolled steel bars, the dominant and controlling role which they play in the negotiation of labor rates throughout the industry, the wide diversity of steel and other products which they produce and sell and the attendant ability, frequently used, to tie sales of these products to the sale of cold finished steel bars, the far-flung distribution systems which they control, their ability to ship steel and other products together with cold finished steel bars thereby obtaining lower freight rates; these firms collectively dominate and control the production, sale and distribution of cold finished steel bars in the area of California, Oregon, Washington and Arizona as well as in the entire United States.

200. The acquisition did not give defendant the power to affect or limit entry into the business of producing or selling cold finished steel bars either in the area of California, Oregon, Washington and Arizona or in the nation as a whole. In the four-state area new entry has been a common occurrence in the last twenty years. Six new producer-sellers have entered into the business of producing and selling cold finished steel bars in the four-state area since 1941; and at least four of these firms, including Sierra, Pacific Tube, M & A and Rods, Inc., have entered this business since the end of World War II. New entry has been a characteristic of the industry throughout the entire nation. Since 1945 no less than 13 new producer-sellers have entered the industry, in addition to those previously listed in the four state area.

201. There are no substantial barriers to entry into the cold finished steel bar industry either in the United

States as a whole or in the area of California, Oregon, Washington and Arizona. The capital requirements necessary to launch a successful enterprise for the production and sale of cold finished steel bars are small.

202. There are no patents or other legal barriers to entry into the cold finished steel bar business either in the United States as a whole or in the area of California, Oregon, Washington and Arizona.

203. Pacific Tube Company ("Pacific Tube") was organized in 1942. It originally produced only cold drawn seamless tubing. In 1946 the company commenced to produce cold finished steel bars in a very limited range of grades and in only round shapes. In 1947, because of raw material procurement problems, the company ceased the production of cold finished steel bars but re-entered the business in 1950. Additional equipment was added and in 1960 the company began the production of squares, hexagons and some flats in a limited range. In 1961 the company commenced the production of a wide range of cold finished steel bars. Production of additional grades has also commenced.

204. Pacific Tube also produces and sells cold drawn tubing as its principal product. Tubing and steel bars can be and are cold drawn on the same machines.

205. Pacific Tube has doubled its capacity for the production of cold finished steel bars in the period 1957 to 1960, an increase of 20,000 tons.

206. Pacific Tube is a corporate affiliate of Superior Tube Company located in Norristown, Pennsylvania. Superior Tube is engaged in the business of manufacturing and selling a wide range of specialty tubing, some of which is sold by Pacific Tube in the west coast area.

207. Pacific Tube has extensive facilities for annealing, normalizing and stress relieving of cold finished steel bars.

208. In 1960 Pacific Tube by the use of new equipment increased the size range of round cold finished steel bars which it produced.

209. M & A Steel Sales and Service Co. ("M & A Steel") was organized in 1952 with an initial capital of $4000. Although it began with only wire drawing facilities, it now has approximately thirty-two drawing blocks suitable for the cold finishing of wire or steel bars. M & A Steel also has extensive facilities for heat treating steel bars and wire and a complete physical and chemical laboratory which was installed in 1956. The company produces rounds, squares, hexagons and flats in smaller dimensions. Besides drawing steel, the company draws bars of such material as inconel, brass, copper and aluminum. M & A Steel primarily sells its cold finished steel as cold drawn steel bars, although it also sells its product as cold drawn wire. Principal customers of the company are the cold and hot heading operators, which, through a process of extrusion, produce industrial fasteners and machine parts from cold finished steel bars and wire. The company also sells to companies who are engaged in the manufacture of parts for aircraft and missiles and increasingly to steel service centers. Although the primary sales area of the company is located in Southern California, considerable shipments are also made to the midwest and to the east.

210. United States Steel Corporation is the largest steel producer in the United States. United States Steel Corporation is an integrated producer of a wide variety of steel products, including but not limited to ingots, blooms, billets, slabs, tube rounds and skelp.

structural shapes and piling, plates, rails and accessories, hot rolled bars, cold finished bars, concrete reinforcing bars, hot and cold rolled sheets and strip, galvanized sheets, rods, wire and forgings. The company operates steel service centers in various parts of the country through its United States Steel Supply Division, including four-such steel service centers located within the four-state area at Los Angeles and San Francisco, California, Portland, Oregon and Seattle, Washington.

211. United States Steel Corporation had total assets, net sales, and net income, as listed below:

| Dec. 31 | Total assets | Net sales | Net income before taxes | Net income after taxes |
|---|---|---|---|---|
| 1960 | $4,626,800,000 | $3,648,900,000 | $583,600,000 | $304,200,000 |
| 1959 | 4,559,137,420 | 3,597,962,559 | 495,676,003 | 254,563,401 |
| 1958 | 4,436,836,950 | 3,438,627,206 | 597,578,391 | 301,558,231 |
| 1957 | 4,074,070,018 | 4,378,274,217 | 848,796,743 | 419,406,956 |

212. Bethlehem Steel Corporation, through its operating subsidiaries, is the second largest steel producer in the United States. Bethlehem Steel Corporation is an integrated producer of a wide variety of steel products, including, but not limited to, ingots, blooms, billets, slabs, tube rounds and skelp, structural shapes and piling, plates, rails and accessories, hot rolled bars, cold finished bars, concrete reinforcing bars, hot and cold rolled bars, cold finished bars, concrete reinforcing bars, hot and cold rolled sheets and strip, galvanized sheets, rods, wire and forgings. Bethlehem Steel Corporation has approximately 140,000 employees.

213. Bethlehem Steel Corporation had total assets, net sales and net income as listed below:

| Dec. 31 | Total assets | Net sales | Net income before taxes | Net income after taxes |
|---|---|---|---|---|
| 1960 | $2,274,957,167 | $2,178,120,164 | $281,179,549 | $121,179,549 |
| 1959 | 2,269,382,851 | 2,055,720,850 | 262,235,859 | 117,235,859 |
| 1958 | 2,195,045,817 | 2,005,937,130 | 282,741,946 | 137,941,946 |
| 1957 | 2,260,340,071 | 2,603,713,277 | 383,125,933 | 191,025,933 |

214. Republic Steel Corporation, an integrated company, is the third largest steel manufacturer in the United States. In addition to the production of a varied line of carbon steel products, Republic ranks as one of the leading producers of alloy and stainless steels in the United States. The largest part of its finishing capacity is for the production of "light" types of steel, such as are used in the manufacture of, automobiles, household, commercial building, etc. equipment. The company does produce pipe in fairly important quantities, but other than this does not have much representation in other capital goods type of steel, such as rails, structural shapes, heavy plates, etc. Republic Steel Corporation has approximately 56,000 employees.

215. Republic Steel Corporation has total assets, net sales and net income as listed below:

| Dec. 31 | Total assets | Net sales | Net income before taxes | Net income after taxes |
|---|---|---|---|---|
| 1960 | $1,121,082,370 | $1,05[illegible],873,006 | $103,246,373 | $52,846,373 |
| 1959 | 1,014,870,722 | 1,076,832,407 | 106,690,116 | 53,890,116 |
| 1958 | 962,981,434 | 910,382,817 | 122,421,680 | 61,921,680 |
| 1957 | 929,821,851 | 1,227,257,507 | 174,614,422 | 85,014,422 |

216. Jones & Laughlin Steel Corporation is the fourth largest steel producer in the United States. It is an integrated company producing pig iron and a diversified line of rolled steel products consisting principally of hot rolled steel products, cold finished steel products, hot and cold strip and rolled sheets, railroad spikes, rods, wire products, and others. The company also is engaged in the production of a diversified line of steel products, including both "light" types such as sheet, strips and wires, and "heavy" types of pipe, plates, structural shapes, etc. Jones & Laughlin Steel Corporation has approximately 41,000 employees.

217. Jones & Laughlin Steel Corporation had total assets, net sales and net income as listed below:

| Dec. 31 | Total assets | Net sales | Net income before taxes | Net income after taxes |
|---|---|---|---|---|
| 1960 | $793,550,000 | $778,752,000 | $57,746,000 | $33,153,000 |
| 1959 | 812,341,000 | 765,672,000 | 58,840,000 | 29,485,000 |
| 1958 | 798,910,000 | 654,060,000 | 42,402,000 | 23,198,000 |
| 1957 | 709,289,000 | 837,568,000 | 88,081,000 | 45,452,000 |

218. Copperweld Steel Company is a partially integrated producer of alloy and carbon steels, tooled and special steels, bars, rods and wire. Copperweld has approximately 4600 employees.

219. Copperweld had total assets in 1959 of slightly over $80,000,000 and in 1960 approximately $78,000,000. During the period 1957 through 1960, Copperweld's sales varied from a low of about $93,500,000 in 1958 to a high of approximately $138,000,000 in 1959. During said period its net income after taxes varied from a low of slightly over $2,000,000 in 1958 to a high of nearly $6,000,000 in 1959.

220. Crucible Steel Company of America, and its subsidiaries are engaged primarily in the manufacture and sale of alloy, carbon, stainless and tool steels produced in electric and open hearth furnaces. Substantially all of the coal and coke and all of the basic pig iron required in the steel manufacturing operations are produced by the company. A substantial portion of steel scrap required is purchased in the open market. Crucible Steel Company has approximately 13,000 employees.

221. Crucible Steel Company of America's assets, during the period 1957 through 1960, varied from a low in 1957 of approximately $165,000,000 to a high in 1959 of approximately $188,000,000. During the same period, Crucible's sales varied from a low of approximately $188,000,000 in 1958 to a high of approximately $236,000,000 in 1957; during the afore-

said period Crucible's net income after taxes varied from a low of approximately $1,240,000 in 1960 to a high of approximately $6,500,000 in 1957.

222. Timken Roller Bearing Company is engaged primarily in the manufacture of tapered roller bearings sold to others for use in building passenger automobiles, trucks, tractors, farm implements, railroad rolling stock and many types of industrial machinery. Timken also produces electric furnace steel bars and seamless tubing. It is a partially integrated producer having a division which supplies its products divisions with most or all of their alloy steel requirements and which also sells some steel in the open market. Timken has approximately 20,000 employees.

223. During the period 1957 through 1960, Timken had assets ranging from a low of about $165,000,000 in 1957 to a high of about $227,000,000 in 1959. During said period its sales varied from a low of approximately $155,000,000 in 1958 to a high of $262,000,000 in 1959. During said period its net income after taxes ranged from a low of about $11,000,000 in 1958 to a high of nearly $30,000,000 in 1959.

224. Colorado Fuel & Iron Corporation ("Colorado Fuel & Iron") is an integrated producer of a wide range of steel products, including, but not limited to, coke, pig iron, rails, structural shapes, plates, hot rolled strip, hot rolled bars, wire rods, plain wire, pipe and tubing, bolts, nuts, rivets and washers, and iron, brass and bronze castings. This company has extensive plant facilities in various locations throughout the United States.

225. Colorado Fuel & Iron had capital stock outstanding on January 1, 1960 as follows:

| | |
|---|---|
| Common Stock | $18,617,161 |
| Preferred Stock | 7,965,925 |

226. In 1960 the company had capital in excess of par value of capital stock in the amount of $61,798,313 and income reinvested in business in the amount of $60,622,588. The total stockholders' equity amounted to $149,003,987. The total revenues of the corporation for the period 1956–1959 are as follows:

| | |
|---|---|
| 1959 | $280,288,103 |
| 1958 | 276,168,902 |
| 1957 | 340,735,180 |
| 1956 | 333,068,664 |

227. In terms of financial resources, Bliss & Laughlin is insignificant when compared with the large integrated steel producers. Thus, Bliss & Laughlin has total assets of around $20,000,000 to 4.6 billion dollars for U.S. Steel, 2.3 billion dollars for Bethlehem Steel Corporation; 1.1 billion dollars for Republic Steel Corporation; and 794 million dollars for Jones & Laughlin Steel Corporation. In terms of sales, Bliss & Laughlin sales in 1960, after the acquisition, accounted for about 1.4% of those of United States Steel; slightly more than 2% of those of Bethlehem; less than 5% of those of Republic; and about 6½% of those of Jones & Laughlin. The earnings of Bliss & Laughlin after taxes amounted to .58% of those of U.S. Steel, only about 1.5% of those of Bethlehem Steel Corporation; about 3.3% of those of Republic Steel Corporation and 5.3% of those of Jones & Laughlin.

228. The increase in net worth of Bliss & Laughlin as the result of this acquisition amounted only to approximately $650,000, or 4%, an amount which is less than some of the year-to-year variations in the net worth of large integrated companies with which Bliss & Laughlin must compete in the sale of cold finished steel bars.

229. As a single product producer and seller, Bliss & Laughlin is at a competitive disadvantage with

integrated steel companies which are able to, and in fact do, use their power in other products to advantage in competing with Bliss & Laughlin in the sale of cold finished steel bars.

230. The prices charged by producers of cold finished steel bars follow the prices set by Republic Steel Corporation both in the western states and in the nation as a whole.

231. Integrated producers of cold finished steel bars have the power to establish cold finished steel bar prices which are relatively unremunerative for the nonintegrated producer, though remunerative to the integrated producer to the extent that they are provided with markets for their hot rolled bar production in the conversion of cold finished steel bars.

232. Integrated producers of cold finished steel bars collect two profits, one from the sale of hot rolled bars to the cold finished steel bar mill, and secondly, the profit on the cold finished steel bar production itself. This gives the integrated producer strength in the competitive race which is not possessed by the non-integrated companies such as Bliss & Laughlin.

233. Labor costs of the defendant, Bliss & Laughlin, Inc., attributable to its collective bargaining unit are determined principally by major integrated steel companies, including the United States Steel Corporation and the United Steel Workers of America, AFL–CIO, in that said steel companies and said union enter into labor agreements with respect to wages, hours of work, holidays, premiums, and fringe benefits such as supplemental unemployment benefits, insurance, death benefits, hospitalization and accident insurance and pensions, and after such agreements are entered into, defendant Bliss & Laughlin, Inc., agrees to the same terms generally as the major integrated steel companies. Wage rates in the bargaining unit influ-

ence the rates of pay of all supervisory and even executive personnel, since it is necessary in the maintenance of plant morale and work incentives to maintain a minimum differential between the rates of pay of supervisors and lower executive personnel and workers in the bargaining unit.

234. Mill suppliers of cold finished steel bars, such as defendant, compete with steel service centers in the sale of such products in California, Oregon, Washington and Arizona.

235. Many purchasers of cold finished steel bars, who are able financially to purchase in large quantities from mill suppliers, at times prefer to pay a higher initial price to a steel service center and thereby avoid the costs of retaining the cold finished steel bars in inventory. Instead of making one large order in a "carload quantity," such customers make a series of smaller orders over a period of time. Many consumers of cold finished steel bars purchase from both mill suppliers and steel service centers.

236. As consumers of cold finished steel bars become larger purchasers from mill suppliers, they also tend to become larger and larger purchasers from steel service centers.

237. The prices at which steel service centers sold their cold finished steel in California, Washington, Oregon and Arizona fluctuated significantly during the period 1957 through 1959. At times the prices charged by steel service centers dropped below the base prices announced in The Iron Age, a trade publication, and at times steel service centers sold at prices equivalent to those charged by mill suppliers.

238. Steel service centers and mill suppliers sell at approximately the same prices to customers who purchase less than two tons of cold finished steel bars in one order.

239. There is no reasonable probability that the chances for collusive price arrangements in the sale of cold finished steel bars in the area of California, Washington, Oregon and Arizona will become greater as a result of the acquisition of the Sierra assets by Bliss & Laughlin.

240. Approximately 40 to 45% of the total sales of defendant in the Los Angeles area are to steel service centers; approximately 65% of the sales are to such steel service centers in San Francisco; and in the Portland-Seattle area approximately 80% of defendant's sales are to steel centers.

241. Because of the size, business sophistication, and bargaining power of steel service centers—a class of customer accounting for the greater part of sales volume in terms of tons in the area of California, Oregon, Washington and Arizona—mill suppliers of cold finished steel bars are compelled to compete more effectively—to do a better job in terms of sales effort, and to maintain higher standards of product quality at lower prices than would be the case if customers were for the most part small, unknowledgeable and lacking in bargaining power vis-a-vis their suppliers.

242. Buyers of cold finished steel bars make a practice of buying from more than one source of supply and do not become dependent upon any one supplier.

243. Plaintiff has not proved the total volume of sales of cold finished steel bars in the states of California, Washington, Oregon and Arizona in any year, nor has it proved the number of sellers of cold finished steel bars in that area. The producing companies listed on Plaintiff's Exhibit 1 as having sold cold finished steel bars in California, Oregon, Washington and Arizona in 1957, 1959 and 1960 are not the only producing companies which sold cold finished steel bars in that area in those years. At least four

mill suppliers of which the plaintiff has taken no account do sell an undetermined quantity of cold finished steel bars in this area: Kaiser Steel Company, International Harvester Company, H. K. Porter & Co., and Fitzsimmons Steel Company. Further, Defendant's Exhibit A-44 suggests the likelihood that the plaintiff has not taken account of various other mill suppliers that may sell in this area: Allegheny Ludlum Steel Corporation, Armco Steel Corporation, Atlantic Steel Co., Firth Sterling, Inc. and Vanadium-Alloy Steel Company..

244. Plaintiff's Exhibit 1, on its face, shows that it was not intended to be a complete list of all producers which shipped cold finished steel bars into California, Washington, Oregon and Arizona in the years 1957, 1959 and 1960. The techniques which the plaintiff's witness Gaffey testified to as having been used by the plaintiff in the preparation of Plaintiff's Exhibit 1 further indicate that it is an incomplete computation of producers shipping cold finished steel bars into California, Washington, Oregon and Arizona in the years 1957, 1959 and 1960.

245. Steel service centers shipped substantial tonnages of cold finished steel bars into California, Oregon, Washington and Arizona in 1957 through 1960, inclusive, from locations outside of that area. There is no proof of the number or identity of mill suppliers from which these steel service centers purchased the cold finished steel bars which were transferred from a steel warehouse outside of these four states into these four states.

246. Joseph T. Ryerson and Son, Inc. ("Ryerson") is a wholly-owned subsidiary of Inland Steel Cor-

poration, and is engaged in the business of maintaining steel service centers which market aluminum, industrial plastics and metal working machinery in addition to a broad line of steel products which includes cold finished steel bars. Ryerson operates twenty steel service centers throughout the United States, including steel service centers in Los Angeles and Emeryville, California, Seattle and Spokane, Washington. Ryerson has shipped the following quantities into its warehouses on the west coast from warehouses located outside of the four states of Washington, Oregon, California and Arizona during the years 1957–1960.

| Year | Tons |
|---|---|
| 1957 | 1,217 |
| 1958 | 1,073 |
| 1959 | 960 |
| 1960 | 1,123 |

The total sales made by Ryerson's warehouses in the four-state area during the period 1957–1960 amounted to between 15,000 and 20,000 tons of cold finished steel bars. Thus, approximately one-third to one-fifth of the total sales made by Ryerson on the west coast consisted of bars which had been transferred from a steel service center located outside the area of California, Washington, Oregon and Arizona.

247. A. M. Castle & Company ("Castle") operates eleven steel service centers distributing steel, aluminum and plastics throughout the United States. The company's home office is in Chicago, Illinois. It operates steel service centers in Los Angeles, San Francisco, and Berkeley, California, and Seattle, Washington. In the period 1957 through 1960, Castle shipped the following quantities of cold finished steel

bars to its steel service centers located in the states of California and Washington from steel service centers located outside the area of California, Washington, Oregon and Arizona:

| Year | Tons |
|---|---|
| 1957 | 1,417 |
| 1958 | 1,015 |
| 1959 | 1,030 |
| 1960 | 902 |

248. A little more than one-half of the sales of cold finished steel bars made by Castle from its west coast steel service centers consisted of bars shipped to these warehouses from one of its warehouses outside of the area of California, Washington, Oregon and Arizona.

249. During the period from 1957 to 1960, cold finished steel bars were imported into the United States from foreign countries, increasing from 761 tons in 1957 to approximately 8,983 tons in 1960, and in the same period imports entering the Los Angeles, San Francisco, Washington and Oregon Customs districts increased from 4 tons in 1957 to 918 tons in 1960. There is no proof of the number of firms which exported these cold finished steel bars into the United States.

250. There are at least forty-seven mill suppliers of cold finished steel bars in the United States.

251. Of the forty-seven mill suppliers of cold finished steel bars in the United States, twenty-one reported their shipments of cold finished steel bars to the American Iron and Steel Institute on its reporting form No. 14 in 1960. (Defendant's Exhibit A-44.) The twenty-one mill suppliers of cold finished steel bars so reporting were: Allegheny Ludlum Steel Corp., Armco Steel Corp., Bethlehem Steel Co., Bliss & Laughlin, Inc., Carpenter Steel Co., Crucible Steel Co. of America, Firth Sterling, Inc., Jones &

Laughlin Steel Corp., Keystone Drawn Steel Co., La Salle Steel Co., Latrobe Steel Co., Pacific Tube Co., H. K. Porter Co., Inc., Republic Steel Corp., Copperweld Steel Co., United States Steel Corp., Universal-Cyclops Steel Corp., Vanadium-Alloy Steel Co., International Harvester Co., Wyckoff Steel Co., and Youngstown Sheet & Tube Co. Although the exhibit does not show which firms sold in which states, it does show reported total shipments of 63,195 tons of cold finished steel bars in the states of Arizona, California, Oregon and Washington in 1960. These facts cast doubt on the plaintiff's evidence of the totality of sales of cold finished steel bars in the four-state area, since because all firms can sell in this area, there is reason to believe that at least some of the firms whether or not reporting on American Iron and Steel Institute Form 14 (Defendant's Exhibit A–44), did sell cold finished steel bars in the area.

252. The American Iron and Steel Institute has for a long period of time gathered and reported statistical information concerning the steel industry. One of the reports which the Institute makes is a form known as AISI–14, Defendant's Exhibit A–44, which does reflect shipments made by various reporting companies of various steel products, including cold finished steel bars, by states. AISI–14 is generally regarded as accurate by, and is relied upon in, the steel industry. It is probably the single most important research tool available to the industry for the evaluation of its market.

253. Because of the substantial defects, as noted in Findings Nos. 243 through 252 above, plaintiff has failed to prove the percentage of total sales of cold finished steel bars in the states of California, Oregon,

Washington and Arizona made by any one or more companies in any given year.

254. Because of the substantial defects, as noted in Findings Nos. 243 through 252 above, no valid conclusions as to the level of concentration of sales by the leading sellers of cold finished steel bars in California, Oregon, Washington and Arizona can be drawn.

255. As used in the economic analysis of competition, the term "concentration" refers to the share of the business which is done by the few largest sellers of a particular product in a particular market area.

256. Concentration figures, whether in terms of sales, capacity or assets, are not in themselves any measure of the vigor of competition or of changes in the vigor of competition in any industry. The purpose of such concentration figures is to provide a framework of information about the particular industry in question, but competition within the industry is not to be found from or measured by such data alone.

257. The acquisition of Sierra by Bliss & Laughlin did not result in any appreciable increase in the level of concentration measured in terms of sales volume in the area of California, Oregon, Washington and Arizona even as reflected by data contained in Plaintiff's Exhibit 1. If Sierra and Bliss & Laughlin are considered as a single company, which they were not, for the whole of 1960, the share of business accounted for by the eight largest firms increased

during the period 1957 through 1960 by only 1.2%. Between 1959 and 1960 the share of the business of the seven leading sellers, measured in terms of sales as indicated on Plaintiff's Exhibit 1, increased by 1.2%; the share of the six leading sellers increased 1.8%; the share of the five largest sellers increased about 3%; and the share of the four largest sellers increased about 4%. It cannot be said that even these slight increases resulted solely, or even primarily, from the acquisition.

258. Even accepting the plaintiff's contentions, as indicated on Plaintiff's Exhibit 1, the combined Bliss & Laughlin-Sierra firm in 1960 had a total of only 24.91% of the sales of cold finished steel bars in the area of California, Oregon, Washington and Arizona as compared with a total of 25.63% in that area in 1959 when the two companies operated independently.

259. In the calendar years 1957, 1959 and 1960 the following named companies, shown on Plaintiff's Exhibit 1, each of which is a producer of cold finished steel bars, sold in the area of California, Oregon, Washington and Arizona the amounts (in tons) of cold finished steel bars listed opposite their respective names. All of the cold finished steel bars shipped by the companies listed below came from points of origin listed opposite the name of the company in the quantities shown. The point or points of origin are in each case the location of producing facilities operated by the particular company. These tonnage figures do not include cold drawn wire.

1960

| Company | Total tons sold | Tons shipped from point of origin |
|---|---|---|
| Republic Steel Corp. | 14,431 | 634, Gary, Ind.; 3,222, Beaver Falls, Pa.; 2,665, Massillon, Ohio; 7,910, Los Angeles, Calif. |
| Bliss & Laughlin, Inc. | [1] 14,054 | 3,457, Harvey, Ill.; 8,234, Los Angeles, Calif.; 2,157, Seattle, Wash.; 206, Buffalo, N.Y. |
| La Salle Steel Co. | 9,267 | Hammond, Ind. |
| Pacific Tube Co. | 8,444 | Los Angeles, Calif. |
| M & A Steel Sales & Service Co. | 3,191 | City of Industry, Calif. |
| Bethlehem Steel Co. | 2,679 | 2,494, Los Angeles, Calif.; 185, Bethlehem, Pa. |
| Jones & Laughlin Steel Corp. | 2,556 | 2,447, Pittsburgh, Pa.; 79, Hammond, Ind. |
| Wyckoff Steel Co. | 1,971 | 28, Ambridge, Pa.; 1,943, Chicago, Ill. |
| Sierra Drawn Steel Corp. | [1] 1,678 | Los Angeles, Calif.; and Seattle, Wash. |
| Copperweld Steel Co. | 1,440 | Warren, Ohio. |
| United States Steel Corp. | [1] 1,046 | Cleveland, Ohio, Waukegan and Chicago, Ill. |
| Crucible Steel Co. | 733 | Pittsburgh, Pa., Syracuse, N.Y., Midland, Pa. and Harrison, N.J. |
| Timken Roller Bearing Co. | 544 | Canton, Ohio. |
| Rods Inc. | 423 | Berkeley, Calif. |
| Precision Drawn Steel Co. | 394 | Camden, N.J. |
| Moltrup Steel Products Co. | 204 | Beaver Falls, Pa. |
| Cumberland Steel Co. | 99 | Cumberland, Md. |

1959

| | | |
|---|---|---|
| Republic Steel Corp. | 16,809 | 265, Gary, Ind.; 3,411, Beaver Falls, Pa.; 2,903, Massillon, Ohio; 10,228, Los Angeles, Calif. |
| Sierra Drawn Steel Corp. | [1] 13,638 | Los Angeles, Calif., and Seattle, Wash. |
| Pacific Tube Co. | 8,325 | Los Angeles, Calif. |
| La Salle Steel Co. | 8,310 | Hammond, Ind. |
| M & A Steel Sales & Service Co. | 5,313 | City of Industry, Calif. |
| Bliss & Laughlin, Inc. | 3,612 | Harvey, Ill., and Buffalo, N.Y. |
| Jones & Laughlin Steel Corp. | 3,167 | 2,995, Pittsburgh, Pa.; 172, Hammond, Ind. |
| Bethlehem Steel Co. | 2,169 | 1,897, Los Angeles, Calif.; 272, Bethlehem, Pa. |
| Crucible Steel Co. | [1] 1,512 | Pittsburgh, Pa., Syracuse, N.Y., Midland, Pa., and Harrison, N.J. |
| Wyckoff Steel Co. | 1,500 | 122, Ambridge, Pa.; 1,378, Chicago, Ill. |
| Copperweld Steel Co. | 1,371 | Warren, Ohio. |
| Timken Roller Bearing Co. | 480 | Canton, Ohio. |
| Rods Inc. | 451 | Berkeley, Calif. |
| United States Steel Corp. | [1] 449 | Cleveland, Ohio, and Waukegan and Chicago, Ill. |
| Moltrup Steel Products Co. | 143 | Beaver Falls, Pa. |
| Cumberland Steel Co. | 60 | Cumberland, Md. |

1957

| | | |
|---|---|---|
| Republic Steel Corp. | 19,239 | 816, Gary, Ind.; 3,571, Beaver Falls, Pa.; 4,787, Massillon, Ohio; 10,075, Los Angeles, Calif. |
| Sierra Drawn Steel Corp. | [1] 9,286 | Los Angeles, Calif., and Seattle, Wash. |
| Pacific Tube Co. | 5,326 | Los Angeles, Calif. |
| La Salle Steel Co. | 7,990 | Hammond, Ind. |
| M & A Steel Sales & Service Co. | 2,951 | City of Industry, Calif. |
| Bliss & Laughlin, Inc. | 4,454 | Harvey, Ill., and Buffalo, N.Y. |
| Jones & Laughlin Steel Corp. | 4,658 | Pittsburgh, Pa., and Hammond, Ind. |
| Bethlehem Steel Co. | 1,912 | 1,471, Los Angeles, Calif.; 441, Bethlehem, Pa. |

Footnotes on following page.

260. In the calendar year 1957, other companies, shown on Plaintiff's Exhibit 1, including those listed below, sold an aggregate of approximately 5,429 tons of cold finished steel bars in the area of California, Washington, Oregon and Arizona. All of the cold finished steel bars shipped by the companies listed below came from one or more of the points of origin listed opposite the name of the company. The point or points of origin are in each case the location of producing facilities operated by the particular company. Tonnage figures do not include cold drawn wire.

| *Company* | *Point of Origin* |
|---|---|
| Copperweld Steel Co | Warren, Ohio. |
| Crucible Steel Co | Pittsburgh, Pa. |
| | Syracuse, N.Y. |
| | Midland, Pa. |
| | Harrison, N.J. |
| Cumberland Steel Co | Cumberland, Md. |
| Moltrup Steel Products Co | Beaver Falls, Pa. |
| Rods, Inc | Berkeley, Calif. |
| Timken Roller Bearing Co | Canton, Ohio |
| United States Steel Corp | Cleveland, Ohio, and |
| | Waukegan and Chicago, Ill. |
| Wyckoff Steel Co | Ambridge, Pa., and |
| | Chicago, Ill. |

[1] This figure includes 970 tons of cold finished steel bars which were converted from hot rolled bars belonging to Bliss & Laughlin's customers.

[2] Represents the period Jan. 1, 1960, to Feb. 15, 1960, on which date Sierra was dissolved. This figure includes 188 tons of cold finished steel bars which were converted from hot rolled bars belonging to Sierra's customers.

[3] This figure includes 261 tons of cold finished steel bars shipped from United States Steel Supply Division warehouses at Chicago, Ill., to one or more United States Steel Supply Division warehouses located in the 4-State area.

[4] This figure includes 1,340 tons of cold finished steel bars which were converted from hot rolled bars belonging to Sierra's customers.

[5] Estimate based on known sales for 1 quarter.

[6] This figure includes 199 tons of cold finished steel bars shipped from United States Steel Supply Division warehouses at Chicago, Ill., to one or more United States Steel Supply Division warehouses located in the 4-State area.

[7] This figure includes 1,288 tons of cold finished steel bars which were converted from hot rolled bars belonging to Sierra's customers.

261. In late November, 1959, Bliss & Laughlin, Inc. purchased real property in Orange County, California. Although Bliss & Laughlin indicated some intention to construct a plant on this property for the production of cold finished steel bars, no definite plans or arrangements had been made for its construction, and the evidence furnishes no basis for determining when, if ever, a plant would have been built. At the time the property in question was purchased, negotiations between Sierra and Bliss & Laughlin were in progress and one important factor influencing defendant to purchase the property was its knowledge that Sierra was then operating on leased premises, and that if the acquisition were consummated, as then seemed probable, it would ultimately be necessary to construct a new plant for what was to become the Sierra Drawn Division of Bliss & Laughlin. Defendant, subsequent to the acquisition of Sierra, purchased real property on Central Avenue, in Los Angeles, California, which has on it a vacant building, for the purpose of building a new plant for the production of cold finished steel bars. The defendant intends to move the assets acquired from Sierra to this new plant when constructed on the Central Avenue site rather than use the Orange County site.

## CONCLUSIONS OF LAW

The Court concludes:

1. In all respects as set forth in the foregoing Findings of Fact.

2. Plaintiff has failed to prove by a preponderance of the evidence that the production and sale of cold finished steel bars constitute an appropriate line of

commerce within the meaning of Section 7 of the Clayton Act (15 U.S.C. 18).

3. Plaintiff has failed to prove by a preponderance of the evidence that the area consisting of the states of California, Oregon, Washington and Arizona is the appropriate section of the country in which to measure the effect on competition of the acquisition of the assets of Sierra by defendant.

4. Plaintiff has failed to prove by a preponderance of the evidence that the effect of defendant's acquisition of the assets of Sierra may be substantially to lessen competition or to tend to create a monopoly in the production and sale of cold finished steel bars in the area consisting of California, Oregon, Washington and Arizona.

5. Plaintiff has failed to prove by a preponderance of the evidence that the acquisition of the assets of Sierra by the defendant violates Section 7 of the Clayton Act (15 U.S.C. 18).

6. Defendant has not violated Section 7 of the Clayton Act (15 U.S.C. 18).

7. Plaintiff is not entitled to a temporary injunction.

FINAL DECREE

In accordance with the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the defendant by its acquisition of the assets of Sierra has not violated Section 7 of the Clayton Act (15 U.S.C. 18).

2. That the plaintiff's Motion for Preliminary Injunction shall be and hereby is denied.

3. That the injunction prayed for in the plaintiff's Complaint shall be and hereby is denied.

4. That the defendant is entitled to a judgment that plaintiff take nothing from it, and that the other relief prayed for in the plaintiff's Complaint shall be and hereby is denied.

5. That this suit shall be and hereby is dismissed for want of equity.

Dated: March 27, 1962.

THURMOND CLARKE,
*United States District Judge.*

Approved as to form:

W. DONALD MCSWEENEY,
MAURICE JONES, JR.,
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Disapproved as to form, February 28, 1962:

MAXWELL M. BLECHER,
*Attorney for plaintiff.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962.

**No. 367**

UNITED STATES OF AMERICA,
*Appellant.*

*vs.*

BLISS & LAUGHLIN, INC.,
*Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

## MOTION TO AFFIRM.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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## CITATIONS.

### *Cases.*


Brown Shoe Co. v. United States, 370 U. S. 294 (1962) ..... 3, 4, 5, 6, 7, 8, 12, 14

Crown Zellerbach Corp. v. Federal Trade Commission, 296 F. 2d 800 (C. A. 9, 1961), cert. den. 370 U. S. 937 (1962) ..... 5, 7

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### *Statute:*


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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962.

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**No. 367.**

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UNITED STATES OF AMERICA,

*Appellant,*

*vs.*

BLISS & LAUGHLIN, INC.,

*Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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## MOTION TO AFFIRM.

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Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the final judgment and decree of the District Court be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

## STATEMENT.

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This is a direct appeal from the final judgment and decree entered on March 27, 1962 by the District Court dismissing the Government's complaint brought under Section 7 of the Clayton Act, 15 U. S. C. 18, alleging the

invalidity of the acquisition by Bliss & Laughlin, Inc. (Bliss) of the assets of Sierra Drawn Steel Corp. (Sierra). The Government filed its Jurisdictional Statement (Jursd. St.) in this Court on August 22, 1962.

The complaint alleges that the acquisition of the assets of Sierra by Bliss would tend substantially to lessen competition or create a monopoly in the production and sale of cold finished steel bars in the area consisting of the states of California, Oregon, Washington and Arizona. The District Court's final judgment containing its findings of fact (Fdgs.) and conclusions of law (Concl.) is set forth in appellant's Jurisdictional Statement as Appendix B. In summary the District Court found that

(1) the production and sale of cold finished steel bars do not constitute a line of commerce (Fdgs. 21-140),

(2) assuming that the production and sale of cold finished steel bars do constitute a line of commerce, the area of California, Washington, Oregon and Arizona does not constitute an appropriate section of the country for measuring the effect of the challenged acquisition (Fdgs. 141-167), and

(3) assuming that the production and sale of cold finished steel bars do constitute the relevant line of commerce and that the aforesaid four-state area is an appropriate section of the country for Section 7 purposes, even then the acquisition of Sierra's assets by Bliss does not have the reasonable probability of substantially lessening competition (Fdgs. 168-260).

## ARGUMENT.

The decision of the District Court is plainly correct.

### There Is No Substantial Question.

The instant case presents no question of substantial importance in the enforcement of Section 7. The Government contends that (1) the District Court applied improper standards in determining the "line of commerce," "section of the country" and "substantial lessening of competition," factors involved in every Section 7 case, and (2) the decision below raises particular uncertainties about the effectiveness of the Act as applied to mergers in the steel industry (Jursd. St. 10).

This Court as recently as June 25 of this year comprehensively construed Section 7 of the Clayton Act, *Brown Shoe Co. v. United States*, 370 U. S. 294 (1962). There is no need to do it again. The decision below raises no question about the effectiveness of "the Act as applied to mergers in the steel industry." See *United States v. Bethlehem Steel Corp.*, 168 F. Supp. 576 (S. D. N. Y., 1958), cited with approval frequently in *Brown Shoe*. *Bethlehem* as approved by this Court provides guidelines for the application of Section 7 to "mergers in the steel industry" which are as certain as our judicial system can provide.

The Government seeks reconsideration by the District Court which "will at least present ultimately for review a decision explicitly focused on the standards set forth in *Brown Shoe*" (Jursd. St. 24). Thus, the Government is asking this Court ultimately to review a lengthy and detailed record merely to reiterate standards to be applied

in Section 7 cases which this Court established at its last term. Even if it were desirable for this Court to decide a Section 7 case this term, it is clear upon a reading of the District Court's opinion and findings as a whole, the standards applied by the District Court are consistent with *Brown Shoe* and *Bethlehem*.

The Government in appealing to this Court is really seeking to overturn findings of fact which are well supported by the record below. *Brown Shoe* establishes that every case under Section 7 is unique and must be decided on its own facts.[1] The District Court decided this case correctly on its own facts.

This motion to affirm should be granted if the decision below is correct with respect to any one of the three essential issues, "line of commerce," "section of the country," "substantial lessening of competition," as to each of which the findings are adverse to the Government. The District Court, although finding that the Government did not prove "line of commerce," accepted its contentions for the purpose of considering the "section of the country" (Fdg. 141). Then for the purpose of measuring the effect of the acquisition on competition the District Court accepted the Government's contentions as to both "line of commerce" and "section of the country" (Fdg. 168). The District Court then found that there is no tendency of the acquisition of Sierra's assets by Bliss to lessen competition even accepting the Government's "line of commerce" and "section of the country" (Fdgs. 169-170).

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1. "* * * Congress indicated plainly that a merger had to be functionally viewed, in the context of its particular industry." *Brown Shoe Co.* v. *United States*, 370 U. S. 294, 321-322 (1962); also see footnote 38 at page 322: "* * * both the Federal Trade Commission and the courts have, in the light of Congress' expressed intent, recognized the relevance and importance of economic data that places any given merger under consideration within an industry framework almost inevitably unique in every case."

In considering the impact of this challenged acquisition on competition, it is significant that neither Bliss nor Sierra compares in size or scope of operation with the large integrated companies against which the sanctions of Section 7 of the Clayton Act have been invoked in *Brown Shoe Co. v. United States*, 370 U. S. 294 (1962), *Crown Zellerbach Corp. v. Federal Trade Commission*, 296 F. 2d 800 (C. A. 9, 1961), cert. den. 370 U. S. 937 (1962), and *United States v. Bethlehem Steel Corp.*, 168 F. Supp. 576 (S. D. N. Y., 1958).

The Government challenges only one of the District Court's Findings of Fact as being clearly erroneous (Fdg. 148, Jurisd. St. 16, ftnote. 8) but argues that improper standards were applied in arriving at the final judgment below. We turn to the questions as presented in the Jurisdictional Statement to demonstrate that the District Court applied proper Section 7 standards.

## Line of Commerce

In our view, this Court in *Brown Shoe Co. v. United States*, 370 U. S. 294, 325 (1962), established that "line of commerce" was to be determined by examining all of the available "practical indicia." There is no set formula for such a determination and no one factor is conclusive. After a comprehensive examination of the great volume of evidence presented relating to "line of commerce," the District Court determined that the Government had failed to prove that the production and sale of cold finished steel bars constitute a "line of commerce" (Fdg. 26).[2]

2 This determination was supported by detailed factual findings none of which is challenged. Products used for same uses as cold finished steel bars: Fdgs. 30, 34-38, 40-80, 86-140; most vendors of cold finished steel bars are not specialized but sell and produce other products often for same end use: Fdgs. 164, 203, 204, 209, 210-225; customers are not distinct in that they buy other

**Section of the Country.**

Although a geographic submarket of the United States *may* be considered the appropriate "section of the country" for Section 7 purposes, the geographic market selected must "both 'correspond to the commercial realities' of the industry and be economically significant." *Brown Shoe Co. v. United States*, 370 U. S. 294, 336 (1962). The District Court in the instant case found that the area of California, Washington, Oregon and Arizona did not constitute an appropriate geographic market (Fdgs. 141-167; Concl. 3). In so concluding the District Court followed "a pragmatic, factual approach."[3] That this four-state area neither corresponds to the commercial realities of the industry nor is economically significant is clearly demonstrated by Findings of Fact 143 through 167.

The Government's contention is that the one fact alone that Sierra's sales and a small part of Bliss' sales were to customers in California, Washington, Oregon and Arizona would constitute that area an appropriate section of the country for Section 7 purposes (Jursd. St. pp. 15-16). Thus the Government's test for determining geographic market would ignore the commercial realities of the industry and lead to the selection of geographic areas which are not economically significant.

The Government places much reliance on the example given in this Court's footnote 65 at page 337 of *Brown*

products both for re-sale in the case of steel service centers and for the same end use in case of both screw machine shops and manufacturers. Fdgs. 9, 241, 246, 247, 37-39, 86-140; cold finished steel bars do not have peculiar characteristics because there are other products with the same characteristics. Fdgs. 15, 46.

3. "Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal, legalistic one." *Brown Shoe Co. v. United States*, 370 U. S. 294, 336 (1962).

*Shoe*. This Court in the body of its opinion at the same page states:

> "The fact that two merging firms have competed directly on the horizontal level in but a fraction of the geographic markets in which either has operated, does not, *in itself*, place their merger outside the scope of § 7." *Brown Shoe Co.* v. *United States*, 370 U. S. 294, 337 (1962). (Emphasis supplied.)

The Government reads this language to mean that the above fact, *in itself*, places the merger within the scope of Section 7. In our view, this language cannot be construed to mean that the geographic area in which the two firms compete is the relevant geographic market for Section 7 purposes regardless of all other considerations, *i.e.*, commercial realities of the *industry* and economic significance of the area. Indeed "[t]he fact that two merging firms have competed directly on the horizontal level in but a fraction of the geographic markets in which either has operated" would be a factor tending to place their merger outside of the scope of Section 7. The District Court did not rely on this one fact alone in determining that the area of four western states was not the appropriate section of the country.

The commercial realities are that West Coast purchasers of cold finished steel bars look to producers from outside of that area for most of their purchases,[4] the determinants of price and supply lie outside the area, there are no economic obstacles to shipments from outside,[5] the area

4. A factual situation like that in *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U. S. 320 (1961); contrasted with the factual situation in *Crown Zellerbach Corp.* v. *Federal Trade Commission*, 296 F. 2d 800 (C. A. 9, 1961), cert. den. 370 U. S. 937 (1962).

5. At page 16 of the Jurisdictional Statement the Government refers to "freight costs" as evidence substantiating the "relative independence" of the four-state area. There is no mention of "freight costs" in the transcript at the pages cited as a reference supporting this statement. The Government never presented any

is an insignificant producing center, from the standpoint of consumption it is insignificant, and almost all sellers compete on a national basis (Fdgs. 143-167). Because of these same factors this four-state area is not economically significant.

The Government interprets this Court's phrase "economically significant" in *Brown Shoe* to have only a quantitative meaning (Jursd. St. 16). The fact of the sale of 67,306 tons of cold finished steel bars in this area standing alone does not make the area "economically significant" as we understand this Court. Cf. *Tampa Electric Co.*, v. *Nashville Coal Co.*, 365 U. S. 320 (1961). The volume of sales in the area would be only one of many factors to be considered in a "pragmatic, factual approach to the definition of a relevant market." The District Court considered a wide range of economic factors as shown by the Findings of Fact. Moreover, the District Court specifically found that the volume of sales of cold finished steel bars in this area was unimportant and insignificant on a national basis (Fdg. 157) even though all of the forty-seven or more producers in the United States could sell there (Fdgs. 193, 250).

The Government's reliance on *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576 (S. D. N. Y., 1958), is misplaced since this case is consistent with the decision below. In *Bethlehem* the defendants contended that the appropriate sections of the country for consideration were the Eastern, Mid-Continent and Western parts, 168 F. Supp. at 596. The Government disputed such a partitioning of the United States although in the instant case it inconsistently urges a Western section of the country. The

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evidence of "freight costs" as an obstacle to shipments into this area and the facts clearly show that the preponderance of cold finished steel bars used in the area was shipped in from outside even from as far east as Camden, N. J. (Fdgs. 147, 148, 259, GX 1, Tr. 35, 37).

Court in *Bethlehem* rejected the defendants' proposal with a statement which aptly describes the Governments' efforts in the instant case:

> "The defendants' tri-partite division of the country is an obvious gerrymandering of the country to meet the exigencies of this case. Neither the industry nor any industry publication has ever recognized this empiric division." 168 F. Supp. 576, 599.

In *Bethlehem* it was held that the entire United States is a relevant market for the steel industry as a whole and for all of the various classes of steel products considered. In addition the Court there found that there were five regional submarkets for the steel industry as a whole and for certain of the various classes of steel products. 168 F. Supp. 576, 603. The Western part of the United States was not found to be a relevant market for any steel product. In determining the regional submarkets the Court relied upon the facts that each such submarket was an area in itself of substantial production or consumption of the steel product for which it was held to be a "section of the country." 168 F. Supp. 576, 601-602. In the instant case the four-state western area was found to be an unimportant and insignificant region.[6]

[6] (1) Northeast quadrant of U. S.—
90% of capacity and production 83% of national consumption.

(2) Four-state area of Michigan, Ohio, Pennsylvania and New York—
48.3% of total industry shipments of "common finished steel products."

(3) Michigan and Ohio—
31.3% of industry shipments.

(4) Michigan—
18.2% of industry shipments ("The defendants concede that Michigan is large enough and important enough to be analyzed separately." 168 F. Supp. at 602.

(5) Ohio—
13.1% of industry shipments.

for both the production (1.3% of national production) and consumption (about 4% of national production consumed in this area) (Fdgs. 155, 157).

It is therefore apparent that the standards applied by the District Court in determining the relevant geographic market are consistent with those used in *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576 (S. D. N. Y., 1958), as well as with the standards of *Brown Shoe*.

## Substantial Lessening of Competition.

The District Court considered all of the relevant factors and determined that this acquisition does not have the proscribed effect on competition even accepting the government's "line of commerce" and "section of the county". It found:

> "In the production and sale of cold finished steel bars in the states of California, Oregon, Washington and Arizona, there is an abundance of capacity and of competing sellers, a wide choice of suppliers among which the purchasers may choose, a lack of obstacles restraining new entrants into the business, and a lack of power in the defendant to affect prices, supply, or entry. All of these factors tend to insure vigorous competition." (Fdg. 179)

We do not understand that this Court intended that the "factors which the Court found dispositive in its analysis of the horizontal aspects of the Brown-Kinney merger (370 U. S. at 343-346)" are the only factors to be considered in all other Section 7 cases involving horizontal mergers (Jurisd. St. 20). "Market shares" and "concentration" are of very little significance where the acquired company which is alleged to have such a large market share did not even sell a full line of cold finished steel bars (Fdg. 186) and was only a one million dollar company (Fdg. 1). After gerrymandering the geographic and product markets, how-

ever, the Government argues these theories in support of its case and we shall comment briefly thereon (Juris. St. 20, 21).

**(a) Market Shares.**

The Government never proved the total volume of sales of cold finished steel bars in the four-state western area and therefore there is no proof of market shares (Fdgs. 243, 244, 253, 254[7]). In footnote 2 of its Jurisdictional Statement at page 5 the Government attempts to by-pass this glaring deficiency in its proof with the following statement:

> "The government economist who compiled these statistics testified that they resulted from investigation of, and inquiry to, all companies which might possibly sell in the four-state area (Tr. 447-48, 451)."

On cross-examination, however, the government economist, Gaffey, stated that he did not contact all of the producers of cold finished steel bars in the United States or even all listed in the 1960 Directory of the American Iron and Steel Institute (Deft. Ex. SS Tr. 843, 844) to inquire of their sales in the West (Tr. 464-465). "All of the producers of cold finished steel bars in the United States are either actual or potential competitors in the sale of cold finished steel bars in California, Oregon, Washington and Arizona" (Fdg. 193). The record fully supports the statement in Finding 244 that "The techniques which the plaintiff's witness Gaffey testified to as having been used by the plaintiff in preparation of Plaintiff's Exhibit 1 further indicate that it is an incomplete computation of producers shipping cold finished steel bars into

7. GX 1 (Tr. 35, 37), Deft. Ex. A41 (Tr. 1035, 1084), A42 (Tr. 1035, 1085), A44 (Tr. 1070, 1081), A57 (Tr. 1141, 1169), A58 (Tr. 1141, 1170), A61 (Tr. 1141, 1190), A62 (Tr. 1192, 1236), SS (Tr. 843, 844); Tr. 194-195, 229, 656-657, 1009-1010, 1142-1144, 1154-1156, 1196-1197.

California, Washington, Oregon and Arizona in the years 1957, 1959 and 1960." (Tr. 464-465, Deft. Ex's. S8 (Tr. 843, 844) and A61 (Tr. 1141, 1190.)*

**(b) National Firms in Local Competition.**

Bliss is a small non-integrated steel company and especially so when compared with its competitors (Fdgs. 210-227). The position of Bliss in the market place is even weaker than its small size would indicate because it does not produce the hot rolled bar from which the cold finished steel bar is converted but must buy it from competitors. Prices at which Bliss sells cold finished steel bars are largely determined by the prices it pays for hot rolled steel bars (Fdgs. 181, 199, 231). The acquiring company in *Brown Shoe* occupies a position comparable not to Bliss but to its competitors, U. S. Steel, Bethlehem, Republic, Jones & Laughlin, Copperweld, Crucible, Timken, etc. (Fdgs. 210-229). All of the assets of Sierra were acquired for only $1,100,000 (Fdg. 1).

**(c) Tendency Toward Concentration.**

There certainly has been no tendency toward concentration in the relevant geographic market even as selected by the Government (Fdgs. 179, 192, 193, 200-209). The Government attempts to make a point of Republic Steel Corporation's acquistion of a California firm "shortly after World War II" (Jursd. St. 22) to show a tendency

8. Moreover, with respect to the completeness of the "investigation" made by the government economist, Gaffey, in compiling statistics, he testified that he "was unable to get any figures" of imports of cold finished steel bars (Tr. 601-602). Yet Bliss introduced evidence of imports obtained from the U. S. Government itself (Deft. Ex's. A56 (Tr. 1141, 1170), A57 (Tr. 1141, 1169), A58 (Tr. 1141, 1170)) which provides the basis for Fdg. 249. His inability even to get data of imports from his own Government further illustrates the incompleteness of Gaffey's investigation and casts doubt on his testimony.

toward concentration. The undisputed facts are that six new firms have commenced "producing and selling cold finished steel bars in the four-state area since 1941; and at least four of these firms, including Sierra, Pacific Tube, M & A and Rods, Inc. have entered this business since the end of World War II." (Fdg. 200.) There is no evidence of a history of acquisitions of producers of cold finished steel bars by anyone.

There is no validity to the Government's discussion of "concentration" (Jursd. St. 21) since as we have shown above there is no proof of total sales or market shares.[9]

**(d) The Economic Factors in the Steel Industry.**

Viewed in the context of the steel industry, this acquisition could not lessen competition. Surely Section 7 was not enacted to protect large integrated steel companies such as U. S. Steel, Bethlehem, Republic, Jones & Laughlin, *et al.*, from Bliss. It would seem obvious that because of their great financial power, multi-product lines, degree of integration and control of the hot rolled bars, these gigantic steel companies are the determining factors in competition and could wipe out Bliss any time they so desired (Fdgs. 210-233).

Although Sierra was not a failing business at the time of the acquisition it was a very small one with inadequate resources as compared with most of its competitors. Its principal plant was located on premises occupied under a lease with an expiration date of February 28, 1962 which was about one year after the acquisition (Fdgs. 1 and 4). Bliss had no plant on the West Coast prior to acquiring Sierra whereas the dominant Republic Steel did and the acquisition fostered competition between the combined company and Republic.

9. At page 21 and footnote 12 of the Jurisdictional Statement the Government refers to "a recent study—on a national scale." We note that this "recent study" is *dehors* the record.

The two merging companies were minute as viewed in the context of the steel industry (Fdgs. 5, 227, 228). All of the assets of Sierra were acquired by Bliss for only $1,100,000 worth of its stock (Fdg. 1). Congress did not intend to block all mergers except those which are *de minimis*. *Brown Shoe Co.* v. *United States*, 370 U. S. 294, 319, 320 (1962). If this acquisition is held to be invalid under Section 7, then no horizontal merger other than those considered *de minimis* will escape the prohibition of this Act once the Government sues, since it could always gerrymander the "section of the country" and "line of commerce" to meet the exigencies of the case it files. Thus the Government will have a veto over all mergers and thwart Congressional intent.

## CONCLUSION.

For the foregoing reasons the decision of the District Court was clearly correct. Section 7 of the Clayton Act has been construed very recently in *Brown Shoe Co.* v. *United States*, 370 U. S. 294 (1962). The District Court properly followed the applicable standards set forth in *Brown Shoe* and properly decided the case on its own facts. The appellant has failed to demonstrate that the Findings of Fact are clearly erroneous. There is therefore no substantial question presented for determination by this Court. Accordingly we request that the motion to affirm the final judgment of the District Court be granted.

Respectfully submitted.

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